

**FIRCREST CITY COUNCIL  
STUDY SESSION AGENDA**

**TUESDAY, JUNE 21, 2022  
6:00 P.M.**

**COUNCIL CHAMBERS  
FIRCREST CITY HALL, 115 RAMSDELL STREET**

---

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **Agenda Modifications**
5. **[Four Corners Update & Discussion](#)**
6. **[Flag Policy Discussion](#)**
7. **[Vending Machines at the Pool & Community Center](#)**
8. **[Tacoma Pretreatment Interlocal & Ordinance Discussion](#)**

Below is the call-in information for the public to listen via Zoom.

**Zoom Meeting Details:**

*Dial-in Information: 1-253-215-8782 Webinar ID: 857 7769 7009 Password: 312044*



## FIRCREST CITY COUNCIL STUDY SESSION

**AGENDA ITEM:** Four Corners Update & Discussion

**DATE:** June 21, 2022

**FROM:** Jayne Westman, Administrative Services Director

---

### **BACKGROUND:**

In early 2020 several stakeholders with interest in the future development of the Four Corners, in the vicinity of 19<sup>th</sup> Street W and Mildred Ave, met to discuss next steps.

Due to the pandemic, these meetings were placed on hold. In 2021, City of University Place took the lead and created a draft interlocal agreement establishing a Four Corners Planning Area in preparation for future development.

On May 3, 2022, stakeholder representatives joined a Zoom whereby we tediously provided feedback line-by-line. Mayor Wittner could not attend the meeting, so Councilmember George joined in his place.

Councilmember George provided an update to the Council at the May 10, 2022, Council meeting.

Currently, we do not have the revised interlocal that details the stakeholder feedback. We also learned that Pierce County is no longer interested in signing an interlocal.

For this study session we wanted to provide the Council with an update that we are still working through drafts of an interlocal and once a final draft is produced, staff intends to bring the draft to a future study session for discussion.

**ATTACHMENTS:** [Four Corners PowerPoint](#)  
[Draft Interlocal](#)

An aerial photograph of a city intersection, showing a grid of white-painted crosswalks on a light-colored pavement. Numerous pedestrians are scattered across the scene, walking in various directions. Long, dark shadows are cast by the people, indicating a low sun position. The overall scene is bright and clear.

# The Four Corners

19<sup>th</sup> Street and Mildred Avenue



# Stakeholders

- City of Tacoma
- City of Fircrest
- City of University Place
- Tacoma Community College
- Sound Transit
- Pierce Transit
- Tacoma Housing Authority
- Metro Parks Tacoma
- Pierce County Utilities
- Tacoma Public Utilities
- Businesses
- Residents
- Students
- Visitors





# Regional Planning

- § James Center  
Countywide Center
- § University Place  
Regional Growth Center
- § Tacoma James Center  
Community Center
- § Fircrest  
Center of Local Importance
- § Sound Transit  
TCC Station
- § Tacoma Housing Authority  
James Center North
- § Metro Parks  
Heidelberg Park

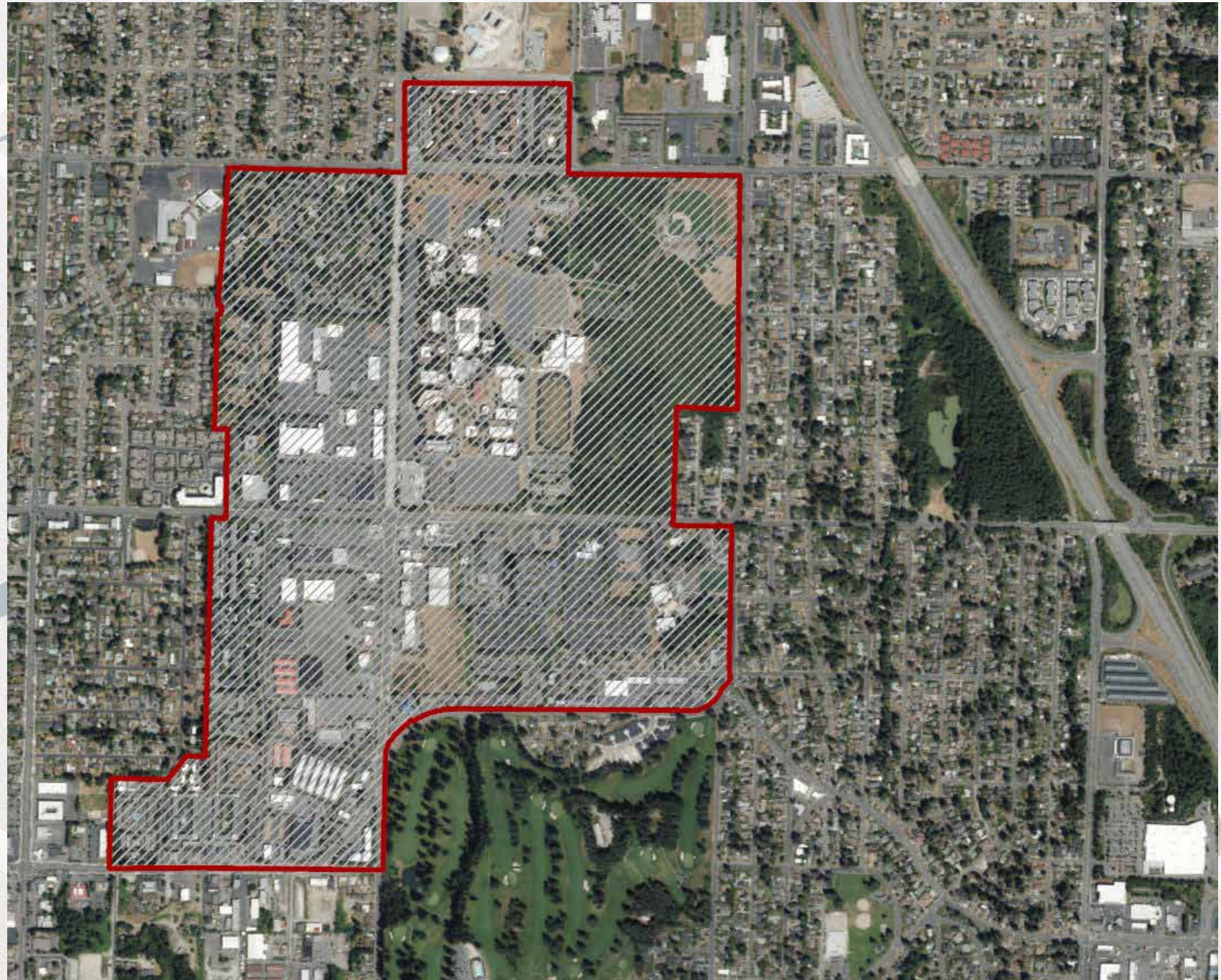




# James Center Countywide Center

Includes:

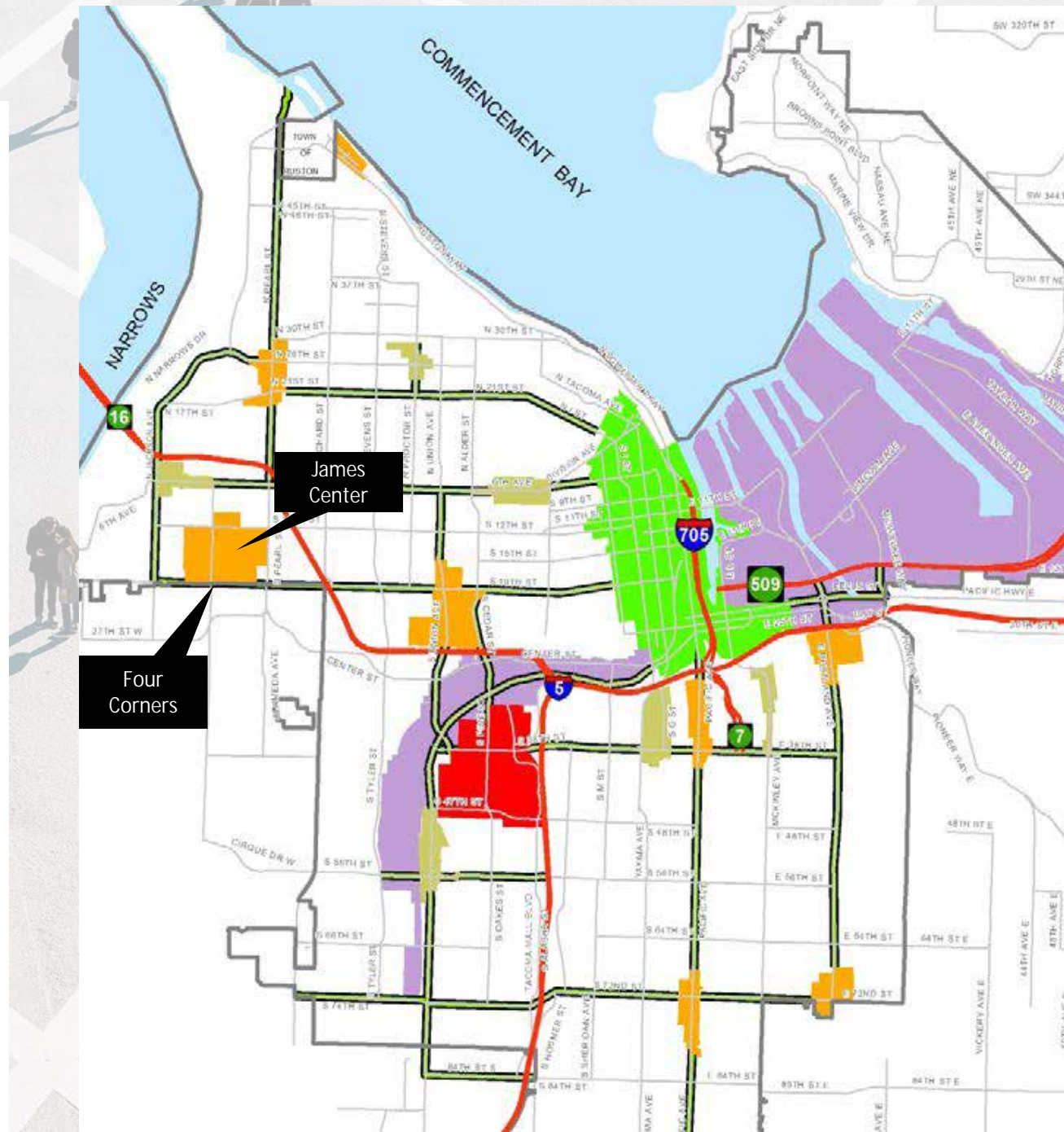
- § Tacoma James Center  
Community Center
- § University Place  
Regional Growth Center  
Northeast Business Dist.
- § Fircrest  
Center of Local Importance
- § Adopted by PCRC in 2019





# James Center Tacoma Community Center

- § Crossroads of two major arterials.
- § Good transit connections.
- § Recreational, cultural and environmental amenities.
- § Good internal and street pedestrian connections.
- § Larger employer, institution or entertainment center.
- § Substantial multifamily development to support transit.
- § Large-scale retail and smaller retail.
- § Single-family neighborhood with pedestrian connections.

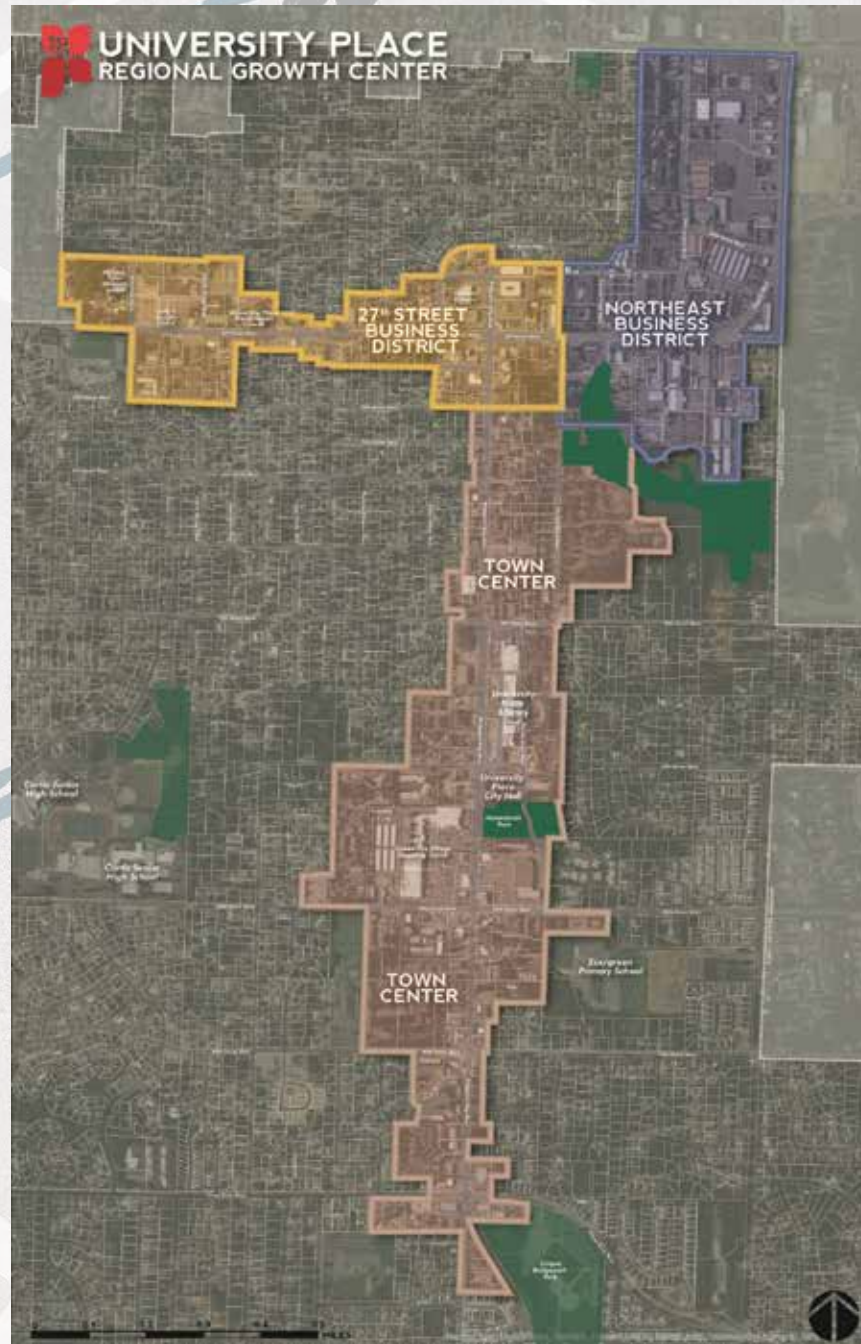




# University Place Regional Growth Center

## Northeast Business District

- § A mix of residential, retail, commercial and light industrial business.
- § Older entertainment uses ripe for redevelopment (Narrows Urban Village).
- § Redevelopment subject to Form-Based Code and Design Standards.
- § Recent road improvements on Mildred Avenue, 70<sup>th</sup> and 27<sup>th</sup> Streets.

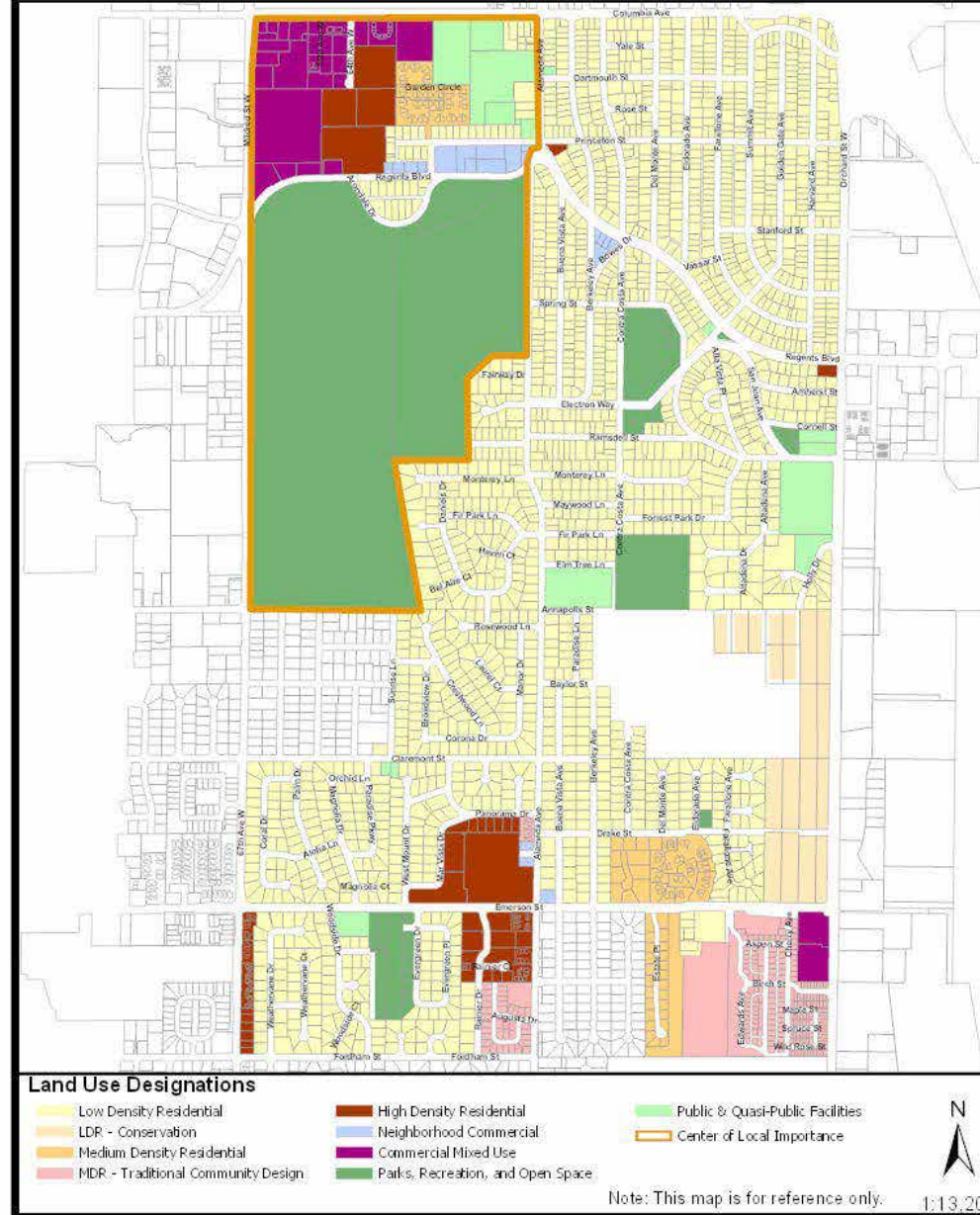




# Fircrest Center of Local Importance

“The northwest corner of Fircrest contains the community’s most intensively developed concentration of land uses, including retail, office, service, and restaurant uses, and multifamily neighborhoods. This area was approved as a Center of Local Importance (CoLI) by the Pierce County Regional Council (PCRC) in 2015.

Figure LU-1  
Land Use Designations





# Sound Transit

## Tacoma Community College Station

- Sound Transit 3, the third phase of the Sound Transit light rail plan will extend the Tacoma Link light rail to Tacoma Community College in 2042.
- From the Tacoma Community College Link light rail station residents will have access to a 116-mile-long light rail service providing service to SeaTac Airport, Seattle, the University of Washington, the east King County cities of Bellevue and Redmond, and cities in Snohomish County north to the City of Everett.
- The Tacoma Community College Link Light Rail Station is proposed to be in the vicinity of Pierce Transit's Tacoma Community College Transit Center at the intersection of 19th Street West and Mildred Avenue.





## Narrows Urban Village

- § Former Narrows Theater and Narrows Bowl sites.
- § Building and Site Development Permits
- § 272 apartment units.
- § 9 buildings.
- § Form-Based Code.
- § Buildings built to street
- § Pedestrian connections throughout and to adjacent streets.







# Interlocal Agreement Interest and Scope

- § Interest in Interlocal Agreement or Memorandum of Understanding?
- § Countywide Planning Policies on Joint Planning
- § Less Formal Arrangement
- § Utilities and Infrastructure Coordination
- § Funding Partnerships
- § Next Steps



**INTERLOCAL AGREEMENT REGARDING JOINT PLANNING BETWEEN PIERCE COUNTY, THE CITIES OF TACOMA, UNIVERSITY PLACE, AND FIRCREST, PIERCE TRANSIT, SOUND TRANSIT, TACOMA PUBLIC UTILITIES, TACOMA COMMUNITY COLLEGE, TACOMA HOUSING AUTHORITY AND METROPARKS TACOMA TO COLLABORATE IN THE PLANNING OF THE FUTURE SOUND TRANSIT LINK LIGHT RAIL STATION AT THE TACOMA COMMUNITY COLLEGE TRANSIT STATION.**

**This Interlocal Agreement**, hereinafter referred to as "Agreement," is entered into by Pierce County, hereinafter referred to as "County," the Cities of Tacoma, University Place and Fircrest, Pierce Transit, Sound Transit, Tacoma Public Utilities, Tacoma Community College, Tacoma Housing Authority and Metroparks Tacoma, hereinafter referred to as "Metroparks," jointly referred to as the "Parties."

**RECITALS**

**WHEREAS**, the Sound Transit 3 Plan, the third phase of the Sound Transit light rail plan, which was approved by voters, will extend the Tacoma Link light rail to Tacoma Community College in 2041; and

**WHEREAS**, from the Tacoma Community College Link, light rail station residents, visitors and students will have access to a 116-mile-long light rail service providing service to SeaTac Airport, Seattle, the University of Washington, the east King County cities of Bellevue and Redmond, and cities in Snohomish County north to the city of Everett; and

**WHEREAS**, the Tacoma Community College Link Light Rail Station is proposed to be in the vicinity of Pierce Transit's Tacoma Community College Transit Center at the intersection of 19<sup>th</sup> Street West and Mildred Avenue; and

**WHEREAS**, on each corner of the intersection of 19<sup>th</sup> Street West and Mildred Avenue are one or more jurisdictions, agencies and stakeholders with independent interests and goals, including the City of Tacoma, the City of Fircrest, the City of University Place, Tacoma Community College, Pierce Transit, Sound Transit, Tacoma Housing Authority, Metro Parks Tacoma, with utilities provided by Pierce County and Tacoma Public Utilities; and

**WHEREAS**, the area around the intersection of 19<sup>th</sup> Street West and Mildred Avenue has been identified in regional and local planning documents as an area where a concentration of future growth in population, housing and jobs is desirable, including the University Place Regional Growth Center, the City of Tacoma James Center Community Center, the City of Fircrest Area of Local Importance and the James Center Countywide Center which combines areas included in the Regional Growth Center,



Community Center and Local Area of Importance; and

**WHEREAS**, a goal of the State Growth Management Act RCW 36.70A.020(11) is to ensure coordination between communities and jurisdictions; and

**WHEREAS**, RCW 36.70A.210 sets forth certain requirements for countywide planning policies, including that countywide planning policies shall address policies for joint county and city planning within urban growth areas; and

**WHEREAS**, Policy 6.6 of the Countywide Planning Policies for Pierce County adopted pursuant to RCW 36.70A.210 contemplates joint planning when certain factors exist, such as: “The likelihood that development, capital improvements, or regulations will have significant impacts across a jurisdictional boundary; or the consideration of how public facilities and services are and should be provided and by which jurisdiction(s)”; and

**WHEREAS**, the Parties participated in discussions regarding their plans for future development near the intersection of 19<sup>th</sup> Street and Mildred Avenue hereinafter referred to as “The Four Corners” and agreed it is in the best interest of the Parties and the public, to collaborate in the planning of improvements, facilities, and services in anticipation of the future Sound Transit Link Light Rail Station serving the area; and

**WHEREAS**, Chapter 39.34 RCW allows municipalities and other public institutions to enter interlocal agreements with other local governments and public institutions to carry out their responsibilities.

**NOW, THEREFORE, for and in consideration of the mutual benefits contained herein, the Parties do hereby agree as follows:**

### **TERMS AND CONDITIONS**

I. INCORPORATION OF RECITALS. Each of the recitals set forth above is incorporated into this Agreement as though fully set forth herein.

II. PURPOSE. The purpose of this Agreement is to establish a framework for the Parties to cooperate and collaborate in the planning and development of public and private infrastructure, and services to create the best possible outcome for the area’s success.

III. JOINT PLANNING AREA. The Parties agree that the area to be included within the joint planning area includes the James Center Countywide Center and the proposed Metroparks Heidelberg Sports Village as depicted in Exhibit A to this Agreement.

IV. PARTIES' ROLES. The Parties jointly agree to:

A. Notify the Parties of any proposals to amend a comprehensive plan, long range plan, or regulation within the Four Corners Joint Planning Area, which



may have a reasonable likelihood of having an impact across jurisdictional boundaries.

B. Notify the Parties of any public or private infrastructure or service improvements or modifications within the Four Corners Joint Planning Area, which may have a reasonable likelihood of having an impact across jurisdictional boundaries.

C. Provide comments when appropriate to any proposals to modify plans or regulations or new or modified infrastructure or services within the Four Corners Joint Planning Area, which may have a reasonable likelihood of having an impact across jurisdictional boundaries.

D. Participate in Joint Planning Meetings to be scheduled from time to time.

E. Consider engaging in optional joint planning items which can provide numerous possible benefits, including but not limited to more efficient delivery of services, shared use of public facilities, coordinated permitting processes, cost sharing for planning and construction of public facilities (e.g., water, sewer infrastructure, parks, etc.), consistent development standards, and proactive identification of potential issues. Joint Planning Actions which the Parties may consider include but are not limited to:

1. Establishing a Joint Planning Board in accordance with RCW 39.34.030(4)(a).
2. Creating a Vision for the Joint Planning Area.
3. Amending Comprehensive Plans or Long-Range Planning Documents to recognize the Four Corners Joint Planning Area.
4. Developing and implementing common goals and policies for the Joint Planning Area.
5. Developing one or more transportation corridor plans within the Joint Planning Area.
6. Considering how public facilities and services are and should be provided and by which jurisdiction(s).
7. Designing consistent wayfinding signage.

V. JOINT FUNDING APPLICATIONS. The Parties recognize that this partnership will result in both foreseen and unforeseen opportunities for grant applications and other joint work. The Parties agree to support joint grant applications which, in the opinion of all the Parties, are consistent with the further planning and development of The Four Corners Joint Planning Area. The Parties agree to consider providing, but do not obligate



themselves by virtue of this Agreement, matching funding or other financial assistance for such grants. The receipt of any such grant(s), and the roles and responsibilities associated with such grant(s) will be stipulated in a separate Memorandum of Understanding setting forth the scope, payment, or other unique requirements of the particular collaborative effort. Each Party, according to their own processes, are authorized to enter into such Memorandum of Understandings as these opportunities arise.

VI. NO SEPARATE ENTITY CREATED. This Agreement does not create any separate legal or administrative entity. This Agreement shall be administered by a designated representative(s) of each party. The Parties shall not financially obligate one another by seeking joint debt financing or by attempting to acquire or hold joint assets. Doing so will result in termination of this Agreement as described herein.

VII. NOTICES. Notices to Parties hereunder shall be sufficient if mailed to the office of the Clerk, or equivalent of each respective Party. Each Party may separately designate a different individual to receive notice by supplying notice to all other Parties.

IX. DESIGNATED REPRESENTATIVE. Each PARTY shall appoint a representative to serve as a liaison between the Parties to carry out the functions contained within this Agreement.

X. HOLD HARMLESS AND INDEMNITY AGREEMENT. Each Party (the Indemnitor) agrees to defend, indemnify and save harmless each other (the Indemnitees), their board or council members, officers, agents and employees, from and against all loss or expense including, but not limited to, judgments, settlements, attorney's fees and costs by reason of any and all claims for damages, penalties or other relief based upon the Indemnitor's alleged negligence, or wrongful conduct, except for the injuries, penalties and damages caused by the sole negligence or wrongful conduct of the Indemnitees. Such claims for damages or other relief include, but are not limited to, those for personal or bodily injury including death from such injury, property damage, torts, defamation, penalties imposed by any agency of the state or federal government for failure to comply with applicable law in the performance of this Agreement. If the claim, suit or action involves concurrent negligence of the Parties, the indemnity provisions provided herein shall be applicable only to the extent of the percentage of each Party's negligence. It is further and expressly understood that the indemnification provided herein constitutes each Party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

#### XI. MEMBERSHIP

A. Termination: This Agreement shall continue until terminated by unanimous consent of the Parties.

B. Withdrawal: Any Party will have the right to withdraw from this Agreement



by giving written notice to the other Parties no later than June 1st of the year in which withdrawal will occur and such withdrawal will be effective as of December 31st of that year.

C. New Parties. Additional parties may join this Agreement at any time upon proper adoption consistent with RCW 39.34.030

XII. ENTIRE AGREEMENT. This Agreement contains the Parties' entire understanding with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein.

XIII. TERM, PERIODIC REVIEW AND AMENDMENT. The initial term of this Agreement is through December 31, 2029 unless terminated or amended. Following the initial term of this Agreement, the Agreement may be automatically extended for another four terms of ten (10) years each unless otherwise terminated pursuant to the termination provisions contained herein. This Agreement shall not be modified or amended without the express written approval of the legislative bodies of the Parties.

XIV. LEGISLATIVE APPROVAL. The Interlocal Cooperation Act, RCW 39.34, requires that this Agreement be approved by the Parties' legislative bodies prior to execution. The Parties hereby affirm their intent to use their best efforts to seek timely approval of the Agreement by their respective legislative bodies.

XV. COMPLIANCE WITH RCW 39.34.040. Each Party entering this Agreement shall be responsible for listing this Agreement on its website or other electronically retrievable public source as provided by RCW 39.34.040.

*[Remainder of Page Intentionally Left Blank – Signature Follow on Next Page]*

XVI. SEVERABILITY. If any provision of this Agreement is deemed unlawful or unenforceable, such provision shall be fully severable, and the remainder of this Agreement shall remain in full force and effect with the automatic addition of a provision as similar in its terms to such illegal or unenforceable provision as may be possible to make such provision legal and enforceable.

EXECUTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

<p>CITY OF TACOMA</p> <p>BY: _____</p> <p>TITLE: _____</p> <p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Tacoma City Attorney</p>	<p>CITY OF UNIVERSITY PLACE</p> <p>BY: _____</p> <p>TITLE: Stephen P. Sugg, City Manager</p> <p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Matthew S. Kaser, University Place City Attorney</p>
<p>CITY OF FIRCREST</p> <p>BY: _____</p> <p>TITLE: _____</p> <p>APPROVED AS TO FORM:</p> <p>_____</p> <p>City Attorney</p>	<p>PIERCE COUNTY</p> <p>BY: _____</p> <p>TITLE: _____</p> <p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Deputy Prosecuting Attorney</p>



**AGENDA ITEM: Flag Policy Discussion**

**FROM: Scott Pingel, City Manager**

---

**BACKGROUND:** At the May 24, 2022, City Council meeting, the City Council adopted a proclamation declaring June 2022 as Pride Month in the City of Fircrest. The proclamation included flying the pride flag at the Community Center. During the discussion regarding the proclamation, it was also determined that the pride flag should be flown at City Hall as well. It was also determined that the City needed to develop and adopt a flag policy. The City Manager's weekly reports for May 27<sup>th</sup> and June 3<sup>rd</sup> included drafts of a Flag Policy. Various City Councilmembers provided feedback that there should be a requirement for a supermajority as well as that there should not be a requirement for a supermajority in order to authorize the display of a commemorative flag. Feedback was received questioning whether in Section 2.2 we should use "members of the public" or "a third party." Feedback was also given regarding how clearly we reference the size of the flag, and that other flags should always be smaller than the American flag but may be the same size as the State flag.

The original draft resolution is attached here with potential language adjustments, based on the feedback above, in track changes. The strikeouts in Section 2.6 were requested by the City Attorney upon their review. The City Attorney has reviewed the policy and commented that the policy is good. He further commented that it makes clear that flags on poles owned by the City are official government speech and that those flag poles are not public forums for free speech. He also likes that the flag policy says that the flags themselves will be purchased by the City and thus be owned by the City.





1

and priorities. The following are not allowed as Commemorative Flags and will not be considered by the City Council:

2

a. Flags of a particular religious movement or creed ~~to avoid the appearance of City government endorsing religion or a particular religious movement or creed;~~

3

4

b. Flags of a political party ~~to avoid the appearance of City government endorsing a political party;~~ and

5

c. Flags advocating a certain outcome in an election.

6

**Section 3:** This Resolution is effective immediately upon passage.

7

**APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON,** at a regular meeting thereof this 14th day of June 2022.

8

9

**APPROVED:**

10

11

\_\_\_\_\_  
Brett L. Wittner, Mayor

12

**ATTEST:**

13

14

\_\_\_\_\_  
Jayne Westman, City Clerk

15

16

**APPROVED AS TO FORM:**

17

18

\_\_\_\_\_  
Hillary J. Evans, City Attorney

19

20

21

22

23

24

25

26

27

28

29

30

31

**AGENDA ITEM:**

**Community Center Vending Machines**

**DATE:**

**June 21, 2022**

**FROM:**

**Jeff Grover, Parks & Recreation Director**

---

**BACKGROUND:** Fircrest has had vending machines in the Roy H. Community Center for many years. Generations of families have looked forward to stopping by the community center vending machines for beverages and snacks while swimming at the pool or enjoying the Community Center and Fircrest Park.

The Community Center has been home to many different vending companies throughout the years. More recently, Fiesta Food Services provided a snack machine in the previous community center when Masterman Vending pulled their machine out. In March of 2022, Fiesta approached City staff as we neared completion of the Community Center and offered to place new or like new vending machines in the new Roy H. Murphy Community Center.

There is no fiscal impact to allow Fiesta Food Services to place a vending machine in the Roy H. Murphy Community Center. We are not able to charge rent on the vending machines. Vending machine Commissions are paid quarterly to the City of Fircrest Kiwanis Club and the Fircrest Parks and Recreation Foundation.

Commission Percentage: (20 oz beverages 15%, Energy Drinks 7%, and Snack Foods 10%)



**AGENDA ITEM: Tacoma Wastewater Pretreatment Interlocal Agreement Discussion**

**FROM: Scott Pingel, City Manager  
Tyler Bemis, Public Works Director**

---

**BACKGROUND:** Tacoma Wastewater owns and operates the facilities that treat, process, and dispose of the wastewater produced by the City of Fircrest. The City of Fircrest wastewater system consists of lateral and trunk sewers for the benefit of our citizens but the City of Fircrest does not own or operate any treatment facilities. All wastewater produced by Fircrest residents is pumped to Tacoma's system via the Contra Costa Lift Station and Princeton Lift Station. The City of Fircrest uses the City of Tacoma Publicly Owned Treatment Works (POTW).

The Washington State Department of Ecology and Department of Health govern the operational requirements for POTW's in the State. Recent updates to the State's standards have required the City of Tacoma to enter into a Wastewater Pretreatment Interlocal Agreement (ILA) on top of the City's current Wastewater Treatment agreement with the City of Tacoma. Further, it is required that we adopt a new code chapter for industrial pretreatment. The ILA and new code chapter establishes Tacoma as the lead agency, which they are required to be as the owner of the POTW. The ILA and new code chapter are requirements for the City of Tacoma to maintain compliance with their NPDES permit, which allows them to discharge treated effluent to the waters of the State.

After our April 2022 study session on this item, Hillary Evans, our City Attorney, reviewed the ILA and code language. She requested a few minor changes, which the City of Tacoma agreed to. The City of Tacoma has indicated that they are not open to any additional changes at this point.

For this study session, I would like to focus on what I heard as the main concern regarding the ILA and new code chapter, which is its potential affect on Fircrest food establishments.

It has become clear since the June 14, 2022, City Council meeting, as City staff have inquired additionally of Tacoma's staff, as well as discussions with Fircrest's City Attorney, that Fircrest's adoption of the ILA and new code chapter is a requirement for the City of Fircrest to continue to utilize Tacoma's wastewater facilities and infrastructure for treatment of the City of Fircrest's wastewater.

**ATTACHMENTS:** [Pretreatment Interlocal Agreement](#)  
[Draft Chapter 20.30 Industrial Pretreatment Program](#)

**INTERLOCAL AGREEMENT BETWEEN**  
**THE CITY OF TACOMA AND**  
**THE CITY OF FIRCREST**  
**REGARDING INDUSTRIAL PRETREATMENT**

This interlocal agreement (the “**Agreement**”) for Industrial Pretreatment is entered into this \_\_\_ day of \_\_\_\_\_, 2022, by and between the City of Tacoma, a municipal corporation, operating under the laws of the state of Washington as a first class city (hereafter “**Tacoma**”) and the City of Fircrest, a Washington municipal corporation (hereafter “**City**”); Tacoma and City may be individually referred to as “**Party**” and collectively referred to as the “**Parties**”.

**RECITALS:**

A. Pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may contract with one another to perform government functions or provide services, which each is by law authorized to perform. Pursuant to RCW 35A.11.040 non-charter code cities are authorized to exercise any of its powers, or perform any of its functions, jointly or in cooperation with other public agencies.

B. Pursuant to RCW 35.67.300 any city or town owning or operating its own sewer system, whenever topographic conditions shall make it feasible and whenever such existing sewer system shall be adequate therefor in view of the sewerage and drainage requirements of the property in such city or town to be served by such system, may contract with any other city or town, for the discharge into its sewer system of sewage from all or any part or parts of such other city or town, upon such terms and conditions and for such periods of time as may be deemed reasonable.

C. Tacoma is a first class charter city and owns and operates a POTW (publicly owned treatment works) under authority of RCW 35.21.210, 35.21.215, 35.67.020, and 35.92.020, Article XI, § 11 of the Washington State Constitution, and Section 4.1 of the Tacoma City Charter.

D. City is a non-charter code city and owns and operates a municipal wastewater system under authority of RCW 35A.11.020, 35A.21.150, and 35.67.020 and Article XI, § 11 of the Washington State Constitution, but does not own or operate a wastewater treatment facility.

E. Tacoma and City have previously entered into an agreement (the “Wastewater Treatment and Disposal Agreement”) dated February 1, 2021, whereby Tacoma and City established the quantity of allowable discharge of domestic and non-domestic wastewater from the City municipal wastewater system to the Tacoma POTW, charges for treatment services; and, further agreed to coordinate and plan cooperatively their



services and facilities.

F. Federal and State laws and implementing regulations regulate the collection and conveyance of wastewater to a POTW that discharges into the navigable waters of the United States and the public waters of the state of Washington under authority of the Federal Clean Water Act, codified at 33 U.S.C. § 1251 et seq. (the “CWA”), and implementing regulations, and RCW Ch. 90.48.

G. The Environmental Protection Agency has enacted regulations that establish Pretreatment Standards (See, 40 C.F.R. 403) which require that all discharges of pollutants into the waters of the United States from a POTW be prohibited in the absence of an NPDES (National Pollutant Discharge Elimination System) Permit. See, 33 U.S.C. 1311 (Section 301).

H. NPDES permits may be issued by the Federal Government, or they may be issued by state agencies that have been delegated the authority to administer their own permit programs. 33 U.S.C. §1342 (a) & (b). The State of Washington has been delegated such authority by the Environmental Protection Agency and has issued NPDES Permits to Tacoma for discharges into waters of the United States and waters of the State.

I. The State Department of Ecology (“Ecology”) manages a waste disposal permit (industrial wastewater discharge permit) program authorized pursuant to RCW 90.48.160 - 200. These statutes require any person who conducts a commercial or industrial operation of any type resulting in disposal of wastewater into a POTW discharging into waters of the state to obtain an industrial wastewater permit, unless a permit exemption applies (See WAC 173-216-050).

J. Ecology has adopted regulations codified at WAC Ch. 173-208 that establish the program requirements applicable to cities, like Tacoma, that seek authorization to issue industrial wastewater discharge permits. The program requirements include the obligation that the permit program adheres to the state or federal pretreatment standards and requirements.

K. Tacoma has been delegated the authority to permit and accept commercial/industrial wastewater discharges from all contributing sources, users and facilities pursuant to Washington State Department of Ecology Order No. DE 94WQ-S358.

L. Tacoma is required to implement and enforce a POTW pretreatment program to regulate and control wastewater discharges from commercial/industrial sources, users and facilities that discharge directly or indirectly to such POTW, pursuant to the requirements of the CWA and the regulations promulgated thereunder (40 CFR Part 403) and Chapter 90.48 RCW and the regulations promulgated thereunder. Such authority may be contained within statutes, ordinances, or a series of contracts or joint powers agreements, which Tacoma is authorized to enact, enter into or implement, and

which are authorized by state law.

M. Commercial/industrial sources, users and facilities located in City either currently contribute, or may in the future contribute, process wastewater discharges to the City municipal wastewater system which are discharged to Tacoma's POTW. At the time of the execution of this Agreement, there are no known industrial users in the City.

N. Food service establishments have the potential to discharge floatable or settleable material to Tacoma's POTW which may be harmful to, or cause obstruction in, the POTW or cause or contribute to pass through or interference.

O. In order to continue to provide services to City, Tacoma must ensure that processed wastewater contributed from industrial sources, users or facilities located in City and food service establishments located in City meet or exceed the standards and requirements prescribed in Tacoma's pretreatment ordinance, Tacoma Municipal Code Chapter 12.08C (hereafter "TMC 12.08C"), Tacoma's pretreatment program approved pursuant to Department of Ecology Order No. DE 94WQ-S358, and the NPDES Permit No. WA0037087, condition S6, and such same or similar condition as may be required in a future NPDES permit issued to Tacoma.

P. NPDES Permit No. WA0037087 and Permit No. WA0037214, condition S6 requires, among other things, that Tacoma establish, where necessary, contracts or legally binding agreements with contributing jurisdictions to ensure compliance with applicable pretreatment requirements by commercial or industrial users within these jurisdictions. Condition S6 requires that these contracts or agreements shall identify the agency responsible for the various implementation and enforcement activities to be performed in the contributing jurisdiction, and the specific roles, responsibilities, and pretreatment activities of each jurisdiction.

Q. The Parties acknowledge and agree that it is necessary to enter into this Agreement to conform to the foregoing requirements and authorities, and that, in particular in this Agreement, City agrees to adopt a pretreatment ordinance and related enforcement ordinance that subjects the commercial/industrial users within its boundaries to the necessary pretreatment controls, and by this Agreement, delegates to Tacoma as lead agency, the authority of the City, to implement and enforce that pretreatment ordinance.

R. It is in the best interests of the Parties of this Agreement and in the interest of the public health, safety and welfare of the area served by the Parties that this Agreement be executed.



## **AGREEMENT**

Pursuant to RCW Ch. 39.34 and RCW 35.67.020, and in consideration of the terms, conditions, covenants and performances contained herein, as well as the attached exhibits, which are incorporated and made a part, hereof, the Parties agree as follows:

### **SECTION 1. RECITALS ADOPTED**

The recitals set forth above are hereby adopted as the factual and legal basis for this Agreement.

### **SECTION 2. INTENT; PURPOSE**

A. City desires to continue to discharge Wastewater to the Tacoma POTW as set forth in the Wastewater Treatment and Disposal Agreement, as may be amended, or any successor agreement that may be agreed to by the Parties. The Parties acknowledge and agree that City, as a condition of discharging to the Tacoma POTW, must establish, implement and enforce a pretreatment program for industrial users that conforms to applicable federal and state laws and regulations and to Tacoma's pretreatment standards and requirements, as amended from time to time. City further desires that the City of Tacoma be and remain the control authority for issuance and enforcement of all industrial wastewater discharge permits within the corporate boundaries of the City and that Tacoma take responsibility as lead agency for implementation and enforcement of the pretreatment program in the City. City acknowledges and understands that Tacoma has adopted a pretreatment program codified at Chapter 12.08C of the Tacoma Municipal Code. Chapter 12.08C contains substantive requirements intended to conform to requirements under applicable laws and regulations made applicable to all permittees under the industrial wastewater discharge permits issued by Tacoma as control authority. City acknowledges and understands that City shall adopt pretreatment standards and requirements that are substantively the same as those adopted by Tacoma.

B. The Parties intend that this Agreement will operate to meet and satisfy Tacoma's obligations, pursuant to the requirements of the CWA (33 U.S.C. §1251 *et seq*) and the regulations promulgated thereunder (40 CFR Part 403) and Chapter 90.48 RCW and the regulations promulgated thereunder, to implement and enforce a POTW pretreatment program to regulate and control wastewater discharges from commercial/industrial sources, users and facilities that contribute process wastewater discharges to the City municipal wastewater system which are then discharged to the Tacoma POTW or that contribute non-domestic wastewater that has the potential to be harmful to, or cause obstruction in, the POTW or cause or contribute to pass through or interference.

C. The Parties intend that this Agreement will establish the roles and responsibilities of Tacoma and City for adoption, maintenance and enforcement of commercial/industrial pretreatment standards; for the user identification and permitting process; and for

inspection, sampling, records management, enforcement and other aspects of implementation and delivery of Tacoma's pretreatment program.

D. The Parties intend that City and Tacoma shall jointly exercise certain regulatory powers as set forth herein, with Tacoma acting on behalf of City as lead agency for implementation and enforcement of pretreatment regulations and as control authority for issuance of industrial wastewater discharge permits, within the corporate boundaries of City. This Agreement shall therefore operate to delegate to Tacoma, as lead agency and on behalf of the City, all lawful power and authority necessary to enforce compliance with City ordinances and regulations governing pretreatment standards and requirements and discharges into the City municipal wastewater system which are then discharged to the Tacoma POTW and establish Tacoma as the control authority for purposes of issuance of industrial wastewater discharge permits.

### **SECTION 3. DEFINITIONS**

In construing all provisions of this Agreement, when not inconsistent with the context, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. If specific provisions of law, code, regulation or rule referred to herein be renumbered or amended, then the reference shall be read to refer to the renumbered and/or amended provision. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. Any terms not defined in this Agreement shall have the definitions as given in the most current version of Tacoma's Municipal Code Chapter 12.08C (TMC Ch. 12.08C). Any terms not defined in this Agreement or TMC Ch. 12.08C, shall have the same meaning as those terms are given in the most current version of WAC 173-208-040. Any terms not defined in this Agreement or TMC Ch. 12.08C, or WAC 173-208-040 (Definitions), shall have the same meaning as those terms are given in the most current version of 40 C.F.R. 403.3 (Definitions). Words not otherwise defined, shall be given their common and ordinary meaning.

A. Control Document. An industrial wastewater discharge permit or any other formal written discharge authorization or prohibition issued by Tacoma, City or Washington State Department of Ecology.

B. Effective Date. The effective date of this Agreement shall be the date set forth above, and if no date is set forth above, the last date entered below by the executive signatories hereto.

C. City municipal wastewater system. The devices and systems owned or operated by City and used in the collection, storage and conveyance of wastewater.

D. Service Area. Property within the corporate boundaries of the City which discharges wastewater to the Municipal Sanitary Sewer System.



E. TMC. The Tacoma Municipal Code.

#### **SECTION 4. PRETREATMENT PROGRAM AUTHORITY AND STANDARDS**

A. Tacoma's Delegated POTW Pretreatment Program Authority. Tacoma owns and operates a POTW and has been delegated the authority to permit and accept industrial wastewater discharges from all industrial sources, users and facilities, pursuant to Washington State Department of Ecology Order No. DE 94-WQ-S358. Tacoma is currently the control authority over the POTW pretreatment program governing direct and indirect discharges to its POTW pursuant to this delegation from the Department of Ecology.

B. Tacoma's Adopted Pretreatment Ordinance. Tacoma has adopted an ordinance codified at TMC Ch. 12.08C which establishes a POTW pretreatment program for the regulation and permitting of users and the enforcement of pretreatment standards and requirements which meet federal, state and local water quality standards for users.

C. City's Adopted Pretreatment Ordinance.

1. City shall adopt an ordinance (the "**Pretreatment Ordinance**") establishing and implementing wastewater pretreatment standards and pretreatment requirements that are no less stringent and are as broad in scope as Tacoma's applicable pretreatment standards and pretreatment requirements as set forth in TMC Ch. 12.08C. The pretreatment ordinance will be enforceable as to all commercial/industrial users located in City's service area and shall include provisions for enforcement of industrial wastewater discharge permits issued by Tacoma to commercial/industrial users within the service area. The pretreatment ordinance shall include enforcement provisions consistent with the authority granted to Tacoma pursuant to TMC Ch. 1.82 and TMC Ch. 1.84.

2. City shall forward to Tacoma for review a draft of its proposed pretreatment ordinance within ninety (90) days of the effective date of this Agreement. Tacoma shall review the pretreatment ordinance for conformance with applicable requirements of this Agreement and approve the pretreatment ordinance, or disapprove the draft pretreatment ordinance and provide comments to City explaining the deficiencies resulting in disapproval. The Parties will act diligently to review and revise the draft pretreatment ordinance, and seek regulatory review and approval by other public agencies to the extent required. Upon review and final approval by Tacoma of the pretreatment ordinance, City will seek approval of the same by its City Council.

D. Amendment of City's Adopted Pretreatment Ordinance. Upon notification of adoption of any amendments made to TMC Ch. 12.08C, or any related enforcement provisions of the TMC, City shall, within 120 days, incorporate such revisions, modifications or amendments into the pretreatment ordinance and any other City sewer

use/pretreatment resolution, to the extent that the TMC Ch. 12.08C revision, modification or amendment significantly revises, modifies or amends City's pretreatment ordinance. City agrees that any amendments made to the pretreatment ordinance shall first be submitted to Tacoma for its review for compliance with this Agreement and that it shall not adopt any amendments to its pretreatment ordinance that would violate the provisions of this Agreement.

E. Pollutant Specific Local Limits. Contemporaneous with the adoption of the pretreatment ordinance, City will adopt pollutant specific local limits, which address at least the same pollutant parameters and are at least as stringent as the local limits enacted by Tacoma. If Tacoma makes any revisions or additions to its local limits, Tacoma will forward to City a copy of such revisions or additions within thirty (30) days of enactment thereof. City will adopt any such revisions or additions within 120 days of receipt thereof

## **SECTION 5. LEAD AGENCY AUTHORIZATION; DELEGATION OF AUTHORITY**

A. Delegation of Authority. City designates Tacoma as its agent and delegates to Tacoma the full power and authority of City to implement and enforce the pretreatment ordinance, and related enforcement provisions, for and on behalf of City. Under such delegation of authority, Tacoma may take any action under the pretreatment ordinance, and related enforcement authority, that could have been taken by City, including the enforcement of the pretreatment ordinance in courts of law. Pursuant to such delegation of authority, and Tacoma's delegation of permitting authority pursuant to Ecology Order No. DE 94WQ-S358, all industrial wastewater discharge permits issued to commercial/industrial users located in the Service Area shall be issued by Tacoma as the control authority. City understands that it may be considered as an implied co-permittee under Ecology Order No. DE 94WQ-S358, or successor order.

B. Technical and Administrative Duties. Tacoma, on behalf of and as agent for City, will perform technical and administrative duties necessary to implement and enforce the pretreatment ordinance. Tacoma will: (1) update the industrial user survey; (2) issue industrial wastewater discharge permits to all industrial users in the service area required to obtain a permit; (3) conduct inspections, take enforcement action, perform sampling and analysis; (4) take all appropriate enforcement responses planned and provided for in the pretreatment ordinance and any adopted policies and procedures, including Tacoma's pretreatment enforcement response plan; and (5) perform any other technical or administrative duties the Parties deem appropriate, including those specified in Section 6 of this Agreement. In addition, Tacoma may, as agent of City, take emergency action to stop or prevent any discharge, which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.

C. Contributing Jurisdictions. Intentionally Omitted.



D. Cost Allocation. Tacoma agrees that it will be responsible for all costs incurred by Tacoma in implementing and enforcing City's pretreatment ordinance; provided that the costs of such enforcement may be recovered by Tacoma within rates and charges assessed to City pursuant to the Wastewater Treatment and Disposal Agreement, as may be amended, or a successor agreement, and such fees assessed to applicants and industrial users pursuant to the pretreatment ordinance. City agrees to adopt a rate and fee schedule consistent with the rate and fee schedule applicable to TMC 12.08C. Any fees directly assessed to applicants and users pursuant to such fee schedule shall be retained by Tacoma to recover its administrative costs. Monetary penalties assessed pursuant to administrative enforcement action taken by Tacoma on behalf of City pursuant to this Agreement, shall be collected and retained by City. Rates and fees assessed pursuant to a special approved discharge authorization or other control mechanism for a short-term discharge to the City municipal wastewater system shall be paid to and retained by Tacoma. Supplemental fees assessed and collected shall be allocated between City and Tacoma based proportionally upon each Party's response costs included in the assessment.

E. Duty of Cooperation. City agrees that it will cooperate in good faith with Tacoma in carrying out its delegated authority to implement and enforce the pretreatment ordinance.

F. Penalties; Enforcement. In the event that a criminal complaint or civil infraction notice is filed to enforce the pretreatment ordinance, City will facilitate prosecution of such criminal or civil action in a court or other hearing body with jurisdiction over such criminal complaint or civil infraction notice, and upon request of Tacoma, agree to appointment of a special prosecutor to prosecute the civil infraction or criminal complaint. In the event administrative enforcement action is taken and/or administrative penalties are assessed to enforce compliance with the pretreatment ordinance, City agrees that any contested hearings shall be conducted before the Tacoma Hearing Examiner, or designee, acting as the Hearing Examiner for the City. City agrees that in any criminal, civil or administrative enforcement action, Tacoma may act as an agency representative of City.

## **SECTION 6. USER IDENTIFICATION**

A. Categorization of Industrial Users. To identify and categorize users, City will work with Tacoma to ensure all significant industrial users are identified and tracked. This shall include methods for periodic and ongoing surveys of all commercial/industrial users, which will be processed in conformance with the pretreatment ordinance. At the time this Agreement is executed, there are no known industrial users in the City.

B. Notice to New Users. Prior to connection to the City municipal wastewater system, all new commercial/industrial users shall be informed of their responsibility to provide survey information.

C. Changes in Discharge Flow or Pollutants. When an existing significant industrial

user alters or increases its discharge in flow or pollutants characteristics by twenty percent (20%) or more, or any time it is requested by Tacoma, City will immediately require that such significant industrial user respond to a user pretreatment survey. City will forward a copy of the completed survey to Tacoma within five (5) days of receipt of the survey.

## **SECTION 7. PERMITTING**

A. After determining that an industrial wastewater discharge permit is required, and upon receipt of a completed industrial wastewater discharge permit application, City shall consult with Tacoma's pretreatment coordinator, who will process the application in accordance with the pretreatment ordinance. Tacoma will provide copy of the draft industrial wastewater discharge permit to City for review and comments. Tacoma will be responsible for issuance of the industrial wastewater discharge permit to the significant industrial user. Representatives of City may attend any permit issuance meeting.

B. Tacoma shall forward a copy of any industrial wastewater discharge permit or industrial wastewater discharge permit renewal to City within 30 days of its issuance by Tacoma.

## **SECTION 8. SAMPLING**

A. Tacoma shall be responsible for coordination of the discharge monitoring, sample collection and laboratory analysis for parameters with effluent limits in an industrial user's industrial wastewater discharge permit.

1. All sampling procedures will conform to procedures set out in the pretreatment ordinance.
2. No permitted industrial user shall be allowed by City to discharge industrial wastewater containing concentrations in excess of the daily or instantaneous maximum allowable discharge limits, "local limits", as stated in the pretreatment ordinance, unless authorized in writing from Tacoma's Director of Environmental Services. These limits shall apply at the point where the wastewater is discharged at end of process before mixing with domestic wastewater.
3. All concentrations for metallic substances are for "total" metal unless indicated otherwise.

## **SECTION 9. INSPECTIONS**

A. Tacoma will perform inspections, surveillance and oversight on industrial users to determine and/or confirm compliance with applicable pretreatment standards and requirements. Tacoma will thoroughly inspect each industrial user in accordance with its approved program document and document findings and efforts to resolve deficiencies.

B. City will notify Tacoma of any pretreatment related issues discovered during normal operation and maintenance of City's municipal wastewater system.

## **SECTION 10. ENFORCEMENT**

A. City agrees to adopt Tacoma's Pretreatment Enforcement Response Plan (ERP) as it now exists, and as may from time to time be amended, as the enforcement response plan of City applicable to enforcement of the pretreatment ordinance. Tacoma will enforce the effluent limits and conditions of an industrial wastewater discharge permit issued to an industrial user in City's Service Area and will enforce the pretreatment ordinance, in accordance with the ERP adopted by City. Responsibility for other administrative and judicial enforcement actions may be allocated between the Parties as set forth herein, and as may be further negotiated and agreed to by City and Tacoma.

B. Nothing in this Agreement shall be construed as prohibiting City's ability to take any other action or enforcement, beyond those stated in this Agreement, to the extent authorized by law.

## **SECTION 11. RECORDS MANAGEMENT**

A. Consistent with the Public Records Act, and any other applicable public records statutes, City will allow Tacoma to inspect and copy records that are relevant to the obligations and duties of City under this Agreement for any user.

B. Tacoma will submit annually a report to Ecology specifying the commercial/industrial users surveyed in City and include a list in its annual pretreatment report. Tacoma shall make a copy of the report available to City.

## **SECTION 12. INTERAGENCY COMMUNICATIONS**

All communications and reports in connection with this Agreement, unless otherwise noted, shall be directed to the following staff, in writing by email, facsimile, regular U.S. mail or certified mail, return-receipt requested. All notices required or permitted to be given hereunder shall be in writing, and shall be deemed effective either, (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) or when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below, or (iii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, properly sealed and addressed as follows:



The City of Tacoma  
 Environmental Services Director  
 2201 Portland Avenue  
 Tacoma, WA 98421

City of Fircrest  
 City Clerk  
 115 Ramsdell Street  
 Fircrest, WA 98466

EMERGENCY SPILL REPORTING	
City of Tacoma Pretreatment Coordinator (253)502-2162  24HR Response (253) 502-2222	City of Fircrest Utility Billing Clerk (253) 564-8900  24HR Response (253) 564-8900
	WA State Department of Ecology Water Quality Engineer Southwest Regional Office PO Box 47775 Olympia, WA 98504

**SECTION 13. INDEMNIFICATION.**

A. To the maximum extent permitted by law, Tacoma and City shall defend, indemnify and hold harmless the other party, and its officers, officials, employees, contractors and agents, from any and all claims, demands, suits, actions, fines, penalties and liability of any kind (collectively "Liabilities"), including injuries to persons or damages to property, which arise out of or are related to any negligent acts, errors, omissions of the indemnifying party and its officers, officials, employees, contractors and agents in performing obligations under this Agreement, including by way of example and not limitation, wastewater or domestic wastewater discharged from users, disruption of treatment processes or operations, harmful degradation of sludge quality, NPDES permit violations, and other air, water and sludge quality violations caused by harmful wastes discharged from users in the service area. However, if any such damages and injuries to persons or property are caused by or result from the concurrent negligence of Tacoma or its officers, officials, employees, contractors and agents, and City or its officers, officials, employees, contractors, and agents, each Party's obligation hereunder applies only to the extent of the negligence of such party or its officers, officials, employees, contractors or agents.

B. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each party's immunity under Industrial Insurance, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

C. In the event that any suit based on such a claim, demand, suit, action, fine, penalty or liability is brought against either party, each party retains the right to participate in said suit if any principle of public law is involved.

## **SECTION 14. OTHER PROVISIONS**

A. Entire Agreement. This Agreement contains the entire written Agreement and constitutes the final Agreement between the Parties concerning the adoption and enforcement of pretreatment standards and requirements for industrial users. This Agreement supersedes all prior discussions and previous agreements concerning such industrial discharges or pretreatment; with the exception that, this Agreement is not intended to supersede or replace the Wastewater Treatment and Disposal Agreement, as may be amended or any successor agreement. This Agreement may be amended only in writing, signed by both Parties.

B. Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence, or its application to any person or circumstance (collectively referred to as "Term"), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such term declared illegal, invalid or unconstitutional shall be severable and the remaining terms of the Agreement shall remain in full force and effect. In the event that such term shall be held or otherwise mutually agreed to by the Parties to be illegal, invalid, or unconstitutional, the Parties shall reform the Agreement pursuant to Subsection C of this Section 14.

C. Subsequent Action; Review and Amendment. The Parties will review this Agreement periodically to ensure compliance with the CWA, RCW Chapter 90.48, and the rules and regulations issued thereunder, Tacoma's NPDES permits, and Tacoma's approved pretreatment program. In the event that after this Agreement becomes effective, (a) there is a change in or clarification of the law, a regulation or Tacoma's Pretreatment Program which changes, narrows, broadens or clarifies the authority or obligations of the Parties with respect to any act permitted or authorized under this Agreement, or (b) the State of Washington or any agency thereof or any agency of the Federal government require the Parties to act in a manner which is inconsistent with any provisions of this Agreement, or (c) any term, article, section, subsection, paragraph, provision, condition, clause, sentence, or other portion of this Agreement, or its application to any person or circumstance, shall be held to be illegal, invalid or unconstitutional for any reason by any court or agency of competent jurisdiction, or (d) City is authorized by the United States Environmental Protection Agency and Ecology to develop and implement a delegated POTW pretreatment program, or (e) because of a change in circumstances, the Parties believe that amendments to this Agreement are necessary or appropriate, then the Parties agree to enter into good faith negotiations to amend this Agreement so as to enable the Parties to address, in a manner reasonably acceptable to Tacoma and City, such change or other development which formed the basis for the negotiations. The Parties recognize that the purpose of the negotiations

would be to preserve, to the maximum extent consistent with the law, the intent, scope and purpose of this Agreement.

D. Challenge to Delegated Authority. If a court, hearing body, or regulatory agency with authority over the City's pretreatment program, determines that the Tacoma lacks authority to enforce the City's pretreatment ordinance, the City will take whatever action is reasonably necessary to ensure the implementation and enforcement of its pretreatment ordinance against its industrial users, including, but not limited to, implementing and enforcing its pretreatment ordinance on its own behalf, and agreeing to amend this Agreement to the extent necessary and reasonable to remedy the lack of authority.

E. Further Documents. The City of Tacoma's Environmental Services Director and the City's City Manager, or their designees, are authorized to execute or furnish such documents as may be necessary to implement and consummate this Agreement and the actions, duties or responsibilities of this Agreement.

F. Term of Agreement. The term of this Agreement shall be ten (10) years, which shall renew automatically for successive one-year terms so long as the Wastewater Treatment and Disposal Agreement, as may be amended, or any successor agreement, remains effective. Upon termination of such service agreement and cessation of discharge of wastewater from any source from the City municipal wastewater system to the Tacoma POTW, this Agreement shall automatically terminate without further action by Tacoma or City.

G. Termination. Because the Agreement is necessary to ensure compliance with Tacoma's POTW pretreatment enforcement obligations under federal law, this Agreement may be terminated only if the Wastewater Treatment and Disposal Agreement, as may be amended, or any successor agreement, that obligates Tacoma to accept wastewater from City has been terminated, and only upon cessation of discharge of wastewater from the City municipal wastewater system to the Tacoma POTW.

H. Dispute Resolution. Tacoma and City shall attempt to resolve a dispute regarding this Agreement by informal negotiation, pursuant to an informal process agreed to by both Parties. If the Parties fail to agree upon an informal process within ten (10) business days of notice of a dispute, or fail to resolve the dispute through an agreed upon informal process, the Parties shall submit the dispute to mediation. Thereafter, either party may seek legal or equitable relief in the courts.

I. Jurisdiction and Venue. This Agreement shall be interpreted in accordance with the laws of the State of Washington and relevant federal requirements. The Superior Court of Pierce County, Washington and/or the Federal District Court for Western Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.



J. No Third Party Rights. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person not a party hereto, and no such person shall have any right or cause of action hereunder, except as may be otherwise provided herein. The Parties intend that the rights, obligations, and covenants in this Agreement and the collateral instruments shall be exclusively enforceable by City and Tacoma, their successors, and assigns.

K. No Joint Venture. No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of the other party.

L. Attorneys' Fees and Costs. If either party incurs attorney fees, costs or other legal expenses to enforce the provisions of this Agreement against the other party, all such fees, costs and expenses shall be recoverable by the substantially prevailing party.

M. Waiver. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement, unless stated to be such through written approval of the non-breaching party and attachment of such written approval to this Agreement.

N. Interlocal Cooperation Act Compliance. This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 2. Its duration is as specified in Section 14.F. Its method of termination is set forth in Section 14.G. Except as otherwise specifically provided herein, each party shall bear its own costs and control its own manner of financing and of establishing and maintaining a budget therefore. No separate entity is created and no real or personal property shall be acquired pursuant to this Agreement, which will need to be disposed of upon partial or complete termination of this Agreement.

O. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington

P. Document Execution and Filing. City and Tacoma agree that there shall be three (3) duplicate originals of this Agreement procured and distributed for signature by the necessary officials of Tacoma and City. Upon execution, one executed original of this Agreement shall be retained by the Tacoma City Clerk, one shall be retained by the Tacoma Environmental Services Department, and one shall be retained by City. The Tacoma City Clerk shall cause a copy of this Agreement to be posted on the City website pursuant to RCW 39.34.040. Upon execution of the originals

and posting of a copy on Tacoma's website, each such duplicate original shall constitute an Agreement binding upon all Parties.

This Agreement may be executed in identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts, have been signed by each party and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by an e-mail which contains an electronic file of an executed signature page, such signature page shall be deemed to constitute an original instrument, with the same force and effect as execution and delivery of an original, and shall create a valid and binding obligation of the party executing the Agreement.

One each of the duplicate originals shall be distributed to the designated agents of the Parties, named as follows:

City of Tacoma  
Director of Environmental Services  
2201 Portland Avenue  
Tacoma, WA 98421

City of Fircrest  
City Clerk  
115 Ramsdell Street  
Fircrest, WA 98466

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their authorized representatives.

**CITY OF TACOMA:**

**CITY OF FIRCREST:**

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
Title: City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Jayne Westman, City Clerk

Approved:

\_\_\_\_\_  
By:  
Environmental Services Director

Approved as to form:

\_\_\_\_\_  
By:  
Finance Director

Approved as to form:

\_\_\_\_\_  
Hillary J. Evans, City Attorney

\_\_\_\_\_  
Chief Deputy City Attorney

\_\_\_\_\_  
By:  
Risk Manager



**CHAPTER 20.30**  
**INDUSTRIAL WASTEWATER PRETREATMENT PROGRAM**

Sections:

**GENERAL PROVISIONS**

- 20.30.010 Purpose and application.
- 20.30.020 Administration.
- 20.30.030 Abbreviations.
- 20.30.040 Definitions.

**GENERAL SEWER USE REQUIREMENTS**

- 20.30.100 Prohibited discharge standards.
- 20.30.110 Categorical pretreatment standards.
- 20.30.120 State requirements.
- 20.30.130 AKART.
- 20.30.140 Industrial user survey form.
- 20.30.150 Payment of rates and fees.

**PRETREATMENT AND MONITORING FACILITIES**

- 20.30.200 Treatment required.
- 20.30.210 Proper operation and maintenance.
- 20.30.220 Monitoring facilities.
- 20.30.230 Operating pretreatment facilities.
- 20.30.240 Wastewater discharge control.
- 20.30.250 Flow equalization.
- 20.30.260 Multi-tenant buildings.
- 20.30.270 Flow, pH, LEL and other meters and equipment.
- 20.30.280 Tampering with water metering devices prohibited.

**INDUSTRIAL WASTEWATER DISCHARGE PERMITTING**

- 20.30.300 Permits required.
- 20.30.310 Industrial wastewater discharge permitting – Existing industrial users.
- 20.30.320 Industrial wastewater discharge permitting – New sources and new industrial users.
- 20.30.330 Industrial users.
- 20.30.340 Industrial wastewater discharge permitting – Application contents.
- 20.30.350 Certification requirements.
- 20.30.360 Special approved discharge authorization.

**INDUSTRIAL WASTEWATER DISCHARGE PERMIT ISSUANCE**

- 20.30.400 Industrial wastewater discharge permit duration.
- 20.30.410 Industrial wastewater discharge permit contents.

- 20.30.420 Industrial wastewater discharge permit modification.
- 20.30.430 Industrial wastewater discharge permit transfer.
- 20.30.440 Industrial wastewater discharge permit revocation.
- 20.30.450 Industrial wastewater discharge permit reissuance.
- 20.30.460 Industrial wastewater discharge permitting – Extra jurisdictional industrial users.
- 20.30.470 Public notice.

**REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS, HAULED WASTE AND DENTAL FACILITIES**

- 20.30.500 Requirements for food service establishments.
- 20.30.510 Requirements for hauled waste.
- 20.30.520 Requirements for dental facilities.

**REPORTING AND NOTIFICATION REQUIREMENTS**

- 20.30.600 Baseline monitoring reports.
- 20.30.610 Compliance schedules.
- 20.30.620 Reports on compliance with categorical pretreatment standard deadline.
- 20.30.630 Periodic self-monitoring reports.
- 20.30.640 Notification of change in discharge or operations.
- 20.30.650 Notification and reports of potential problems.
- 20.30.660 Slug discharge – Notification and plan development.
- 20.30.670 Reports for industrial users.
- 20.30.680 Notice of noncompliance.
- 20.30.690 Notification of the discharge of hazardous waste.
- 20.30.700 Requests for information.

**COMPLIANCE MONITORING AND RECORDKEEPING**

- 20.30.800 Analytical and sampling requirements.
- 20.30.810 Specific sampling requirements for industrial users.
- 20.30.820 Monitoring – Recordkeeping.

**RIGHT OF ENTRY AND CONFIDENTIALITY**

- 20.30.900 Right of entry – Inspection and sampling.
- 20.30.910 Public disclosure and confidentiality.

**PUBLICATION OF INDUSTRIAL USERS IN SIGNIFICANT NONCOMPLIANCE**

- 20.30.1000 Publication of industrial users in significant noncompliance.

**AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

- 20.30.1100 Upsets.
- 20.30.1110 Bypass.

**ENFORCEMENT AND REMEDIES**

- 20.30.1200 Violations, enforcement and penalties.
- 20.30.1210 Methods of Service

- 20.30.1220 Civil violations
- 20.30.1230 Compliance orders
- 20.30.1240 Expedited informal review
- 20.30.1250 Liability for supplemental fees
- 20.30.1260 Corporate and personal liability
- 20.30.1270 Suspension of service
- 20.30.1280 Appeal – Request for hearing
- 20.30.1290 Remedies non-exclusive.

**MISCELLANEOUS PROVISIONS**

- 20.30.1300 Severability.

## **GENERAL PROVISIONS**

### **20.30.010 Purpose and application.**

The City owns and operates a municipal wastewater system that collects, conveys and discharges wastewater to the City of Tacoma publicly owned treatment works (POTW) for treatment and disposal. All wastewater discharged to the municipal wastewater system through a side sewer or other connection to the municipal wastewater system is discharged to the POTW. This chapter sets forth uniform requirements for industrial users of the POTW to comply with all applicable state and federal laws, including Chapter 90.48 RCW, Chapter 173-216 WAC, Chapter 90.48 RCW, the Federal Clean Water Act (33 U.S.C., Section 1251 et seq.), the General Pretreatment Regulations (40 CFR Part 403), and this chapter. This chapter shall apply to all industrial users of the POTW and all other persons responsible for compliance with any requirement of this chapter. The purpose of this chapter is:

- A. To protect the municipal wastewater system and POTW by preventing the introduction of pollutants into the POTW through the municipal wastewater system that may interfere with operation of the POTW, or be incompatible with, or otherwise cause damage to, the POTW;
- B. To prevent the introduction of pollutants into the POTW that will pass through if inadequately treated prior to discharge into receiving waters;
- C. To protect personnel who may be affected by wastewater and biosolids in the course of their employment and to protect the general public;
- D. To require persons regulated by this chapter to pay applicable fees; and
- E. To enable City to comply with its wastewater pretreatment obligations set forth in the Wastewater Treatment and Disposal Agreement and Interlocal Pretreatment Agreement with the City of Tacoma.

### **20.30.020 Administration.**

A. Administration. The City will administer this chapter in accordance with the purposes set forth herein and in accordance with the authority set forth in Chapter 35.67 RCW, and other applicable federal, state and local laws and regulations, the state pretreatment delegation to the City of Tacoma and the City's pretreatment program policies and procedures. In the event there is a conflict between a requirement of this chapter and: (a) a provision contained within it; (b) a provision of a permit issued under this chapter; or (c) a provision of an applicable federal or state law or regulation, the requirement(s) that are more protective of the environment shall apply.

B. Responsibility for Compliance. It is the intent of this chapter to place the responsibility for complying with its requirements, and any policies, regulations, manuals, procedures, and guidance adopted pursuant to this chapter, and any permit, authorization or approval granted pursuant to this chapter, upon the permittee, the person granted an authorization or approval, the facility operator, the facility manager, the facility owner, the owner and operator of any food service establishment or other business subject to regulation under this chapter, and any other person when that person's action or failure to take action causes or contributes to a violation of this chapter or any permit, authorization, or approval made or given pursuant to this chapter. It is further the intent of this chapter that, whenever a facility constitutes an industrial user, the permittee, facility operator, facility manager, and facility owner shall be responsible for



compliance with all requirements, obligations, limitations, and prohibitions made applicable to an industrial user pursuant to this chapter. It is further the intent of this chapter that the permittee, operator, facility manager, and owner of a facility that constitutes a new source or existing source shall be responsible for compliance with all requirements, obligations, limitations, and prohibitions made applicable to a new source or existing source pursuant to this chapter.

C. Appeals of Decisions and Determinations. Appeals of discretionary decisions or determinations made by the Control Authority pursuant to this chapter are governed by FMC 20.30.020.D; provided that, appeals of enforcement actions taken pursuant to this chapter are governed by FMC 20.30.1200 et seq.

D. Appeals of discretionary decisions or determinations.

1. The term decision or determination as used in this section shall mean and refer to a discretionary decision made by the control authority under authority of this chapter, but shall not mean or refer to, (1) the promulgation or publication of policies, procedures, guidelines, requirements, or manuals intended to implement, supplement, interpret or guide compliance with the requirements of this chapter, or (2) enforcement actions taken pursuant to this chapter. Appeals of enforcement actions are governed by FMC 20.30.1200 et seq.

E. Appeals of decisions or determinations made by the Control Authority pursuant to this chapter are governed by the following provisions.

1. Any person aggrieved or adversely affected by a decision or determination made by the Control Authority under authority of this chapter who wants to contest such decision or determination, shall file a written appeal with the Hearing Examiner setting forth the errors of law or fact alleged to have been made, and request a hearing within thirty (30) days of receipt of such final decision or determination.

2. The Hearing Examiner shall conduct a hearing in the appeal of a decision or determination by the control authority pursuant to the Hearing Examiner Rules of Procedure for Hearing.

3. The burden of proof shall be on the appellant to demonstrate by a preponderance of the evidence that the Control Authority committed an error of law or fact or that the decision or determination was arbitrary or capricious.

4. In exercising such powers of review, the Hearing Examiner may, in conformity with the applicable provisions of this chapter, reverse or affirm the control authority's decision or determination in whole or in part, or may modify the decision or determination and make such order as appears just to the Hearing Examiner.

5. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:

a. The decision or determination of the control authority has prejudiced or is likely to prejudice that person;

b. That person's asserted interests are among those that the control authority was required to consider when it engaged in the decision or determination challenged; and

c. A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the decision or determination of the control authority.

F. Liberal Construction. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

**20.30.030 Abbreviations.**

The following abbreviations, when used in this chapter, shall have the designated meanings:

AWWA	American Water Works Association
BMPs	Best Management Practices
BOD5	5-Day Biochemical Oxygen Demand
BTEX	Benzene, Toluene, Ethylbenzene, Xylene
°C	degrees Celsius
COD	Chemical Oxygen Demand
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
ERP	Enforcement Response Plan
°F	degrees Fahrenheit
FMC	City of Fircrest Municipal Code
FOG	Fats, Oil and Grease
gpd	gallons per day
GGI	Gravity Grease Interceptor
HMGII	Hydromechanical Grease Interceptor
LEL	Lower Explosive Limit
MAIL	Maximum Allowable Industrial Loading
mgd	million gallons per day
mg/L	milligrams per liter
MIU	Minor Industrial User
NAICS	North American Industry Classification System
NPDES	National Pollutant Discharge Elimination System
O&M	Operation and Maintenance
POTW	Publicly Owned Treatment Works
RCRA	Resource Conservation and Recovery Act
RCW	Revised Code of Washington
SDCP	Slug Discharge Control Plan
SIC	Standard Industrial Classification
SNC	Significant Noncompliance
TMC	Tacoma Municipal Code
TRC	Technical Review Criteria
TSS	Total Suspended Solids

UPC	Uniform Plumbing Code
U.S.C.	United States Code
WAC	Washington Administrative Code

**20.30.040 Definitions.**

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein unless a different meaning is otherwise plainly required. Words not otherwise defined in this chapter shall have the meaning given in such federal and state statutes, rules, or regulations that apply to the activity being regulated. Words not otherwise defined, shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The words “shall” and “will” are always mandatory and not merely directory and the word “may” is permissive. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority.

“Abate” or “correct” or “remedy,” or any derivation thereof, means to act to stop an activity, and/or to repair, replace, remove, restore, rehabilitate, or otherwise remedy a condition, where such activity or condition constitutes a violation; provided that, the actions taken must not endanger the general health, safety, and welfare of the community and must resolve the violation by bringing the activity or condition into compliance with the regulation alleged to have been violated, and into compliance with any standards or requirements applicable to the actions taken to repair, replace, remove, restore, rehabilitate, or otherwise remedy the condition.

“Amalgam process wastewater.” Any wastewater generated and discharged by a dental discharge facility through the practice of dentistry that may contain dental amalgam.

“Amalgam separator.” A collection device designed to capture and remove dental amalgam from the amalgam process wastewater of a dental discharge facility.

“Amalgam waste.” Any non-contact and contact scrap amalgam waste or wastestream containing mercury or residues from the preparation, use or removal of amalgam. This includes, but is not limited to, any mercury waste generated or collected by chair-side traps, screens, filters, vacuum systems filters, amalgam separators, elemental mercury, amalgam capsules and autoclaves or other equipment that comes in contact with mercury.

“Applicable pretreatment standard.” The most restrictive federal or state pretreatment limit or prohibitive standard, or local limit, contained in or referenced by this chapter with which an industrial user is required to comply.

“Authorized representative” or “duly authorized representative of the industrial user.”

A. If the industrial user is a corporation:

1. The president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

2. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including: having the explicit or implicit duty of making major capital investment recommendations; initiating and directing comprehensive measures to assure long-

term environmental compliance with environmental laws and regulations; ensuring that the necessary systems are established or actions are taken to gather complete and accurate information for reporting requirements established by the Control Authority, if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

B. If the industrial user is a partnership or sole proprietorship: a general partner or proprietor, respectively;

C. If the industrial user is a limited liability company, the managing member(s) of the limited liability company;

D. If the industrial user is a federal, state, or local governmental facility: a director or the highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or the designee of such official; and

E. The individuals described in paragraphs A through D above may designate another duly authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the Control Authority.

“Batch discharge.” A special method of discharging wastewater defined in and authorized by an industrial wastewater discharge permit, special approved discharge authorization or other control mechanism.

“Best Management Practices” or “BMPs.” A schedule(s) of activities, treatment practices, prohibitions of practices, maintenance procedures, and other management practices based on applicable Pretreatment Standards in 40 CFR Part 403, federal categorical effluent standards and applicable state and local pretreatment requirements including local limits which are implemented by an industrial user to prevent or reduce pollutants from entering a facility’s waste stream and causing “interference” and/or “pass through” and/or damage to biosolids.

“Biochemical Oxygen Demand, 5-Day” or “BOD<sub>5</sub>.” The quantity of oxygen used in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20 degrees (20°) Celsius, expressed in parts per million or milligrams per liter (mg/L) by weight, using methods approved under 40 CFR Part 136.

“Business day” shall mean Monday through Friday, excluding all state and national holidays and days that City Administrative Offices are closed due to inclement weather conditions, war, riots, or natural disaster.

“Bypass.” The intentional diversion of a wastestream from any portion of an industrial user’s treatment facility prior to being discharged to the POTW.

“Categorical Industrial User.” An industrial user subject to national categorical pretreatment standards.

“Categorical pretreatment standard” or “categorical standard.” Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with 33 U.S.C. Section 1317 that apply to a specific category of industrial users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

“City.” Unless a different meaning is otherwise plainly required, the City of Fircrest, a municipal corporation organized and existing under and by virtue of the laws of the state of



Washington. The phrase “within the City” means within the City boundaries as now or hereafter constituted.

“Civil infraction” shall mean any act or omission that constitutes a violation of any regulation and which violation is designated in the City code as a civil infraction.

“Complete written instrument” means an instrument which is fully drawn with respect to every essential feature thereof; “incomplete written instrument” means an instrument which contains some matter by way of content or authentication but which requires additional matter in order to render it a complete written instrument.

“Compliance order” shall mean an order or directive that is subject to enforcement under this chapter and issued by a control authority directing the responsible person to take corrective action or to cease certain action identified in the order. Compliance orders include, by way of example only and not limitation, an order to take corrective action; a stop-work order; a stop-use order; an emergency order; and an order to vacate, repair, or demolish a non-compliant structure.

“Color.” The optical density at the visual wavelength of maximum absorption, relative to distilled water.

“Composite sample.” Multiple grab samples collected over time, either by continuous sampling or by mixing discrete samples and are reported as the average wastewater characteristic concentration for the period of time during which the composite sample was collected.

“Control Authority.” The City of Tacoma, acting as the City’s agent pursuant to a Pretreatment Interlocal Agreement, as lead agency for implementation and enforcement of pretreatment regulations set forth in this chapter and as control authority for issuance of industrial wastewater discharge permits, within the corporate boundaries of the City; provided that, nothing herein shall be construed or operate to waive or abdicate the City’s authority to enforce the requirements of this chapter.

“Control mechanism.” An industrial wastewater discharge permit, a special approved discharge authorization, a letter, an authorization to discharge, or any other written notice of discharge requirements issued by the Control Authority.

“Cooling water.” Cooling water shall mean contact cooling water or noncontact cooling water which have the following meanings:

A. Contact: Water used for cooling purposes which comes in contact with any raw material, intermediate product, waste product or finished product; and

B. Noncontact: Water used for cooling purposes which does not come in contact with any raw material, intermediate product, waste product or finished product and the only pollutant added is heat.

“Corporation” means any firm, business, association, partnership, limited liability company, corporation, or other legal entity, public or private, however organized.

“Correction notice” means a verbal or written statement, made or issued by a control authority, notifying a responsible person that a violation(s) has occurred or may occur, informing such person of the legal and factual basis for the determination that a violation has occurred or may occur, and informing such person that the violation(s) must be abated or mitigated or that certain action must be taken to prevent a violation(s) from occurring. A correction notice is intended to be a warning and is not the equivalent of a compliance order and is not subject to appeal.

“Corrective action” means action to abate, mitigate, or remediate.

“Costs of abatement” or “costs of remediation” or “costs of mitigation” shall mean the costs of any abatement, remediation, or mitigation action taken by the City to abate, remediate, or mitigate the violation using lawful means in the event that the responsible person fails so to do. The term includes incidental expenses including, but not limited to, personnel costs, both direct and indirect and including attorneys’ fees; costs incurred in documenting the violation; hauling, storage, and disposal expenses; and actual costs and expenses of the City in preparing notices, specifications, and contracts, and in accomplishing and/or contracting and inspecting the work; the costs of any required printing and mailing; and other administrative costs.

“Daily maximum discharge limit.” The maximum allowable discharge limit of a pollutant that may be discharged during a twenty-four (24) hour period or as specified in an industrial user’s industrial wastewater discharge permit. Where daily maximum limits are expressed in units of mass, the daily discharge is the total mass discharged over the sampling period. Where daily maximum limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken during that sampling period.

“Days.” Unless otherwise indicated, “days” means calendar days.

“Dental amalgam.” An alloy of elemental mercury and other metal(s) that is used in the practice of dentistry.

“Dental discharge facility.” A facility where the practice of dentistry is performed and wastewater is discharged to the POTW.

“Dilute.” A waste stream that has been reduced in strength by the addition of water or another solution.

“Domestic wastewater.” Water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, and other places, which is similar in volume or chemical composition to wastewater discharged from a residential dwelling unit.

“Emergency” means a situation that requires immediate action to prevent or eliminate an imminent threat to the health, welfare, or safety of persons or property.

“Enforcement Response Plan”. The procedures adopted by the control authority as required pursuant 40 CFR 403.8(f)(5) for investigating and responding to instances of industrial user non-compliance with federal, state, and local wastewater discharge regulations.

“Environmental permit.” An authorization, order or equivalent control mechanism issued by a federal or state agency, or local jurisdiction to implement the requirements of an environmental law, regulation, or ordinance.

“Exempt dental discharge facility.” Any dental facility in which amalgam is not placed, removed, or used at any time in the dental practice or a dental facility that does not discharge amalgam process wastewater to the POTW.

“Existing source.” Any industrial user that is not a new source.

“Facility.” A building, structure, equipment, installation, land, or any combination thereof, that is a source or potential source of an indirect discharge of wastewater to the POTW. This term shall not mean or include pretreatment facilities, wastewater pretreatment facilities, or food service establishment facilities, as those terms are used in this chapter.

“Facility manager.” The person in the position of the most senior corporate officer, executive, leader or administrator in charge of the daily supervision and operation of a facility. The facility manager may or may not be a duly authorized representative of the industrial user.

“Falsely alter.” To falsely alter a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner.

“Falsely complete.” To falsely complete a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it.

“Falsely make.” To falsely make a written instrument means to make or draw a complete or incomplete written instrument which purports to be authentic, but which is not authentic either because the ostensible maker is fictitious or because, if real, the maker did not authorize the making or drawing thereof.

“Federal Clean Water Act.” The Federal Water Pollution Control Act, as amended and codified at 33 U.S.C. 1251 et seq.

“Food service establishment.” Any non-mobile facility, which serves, prepares, processes, manufactures, or packages food for consumption such as a restaurant, commercial kitchen, caterer, hotel, school, hospital, detention facility, food caterer, convenience store, grocery store, manufacturing facility, or care institution.

“Grab sample.” A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream over a period of time not to exceed fifteen (15) minutes.

“Hauled waste.” Any domestic or non-domestic wastes delivered by tanker truck for discharge to the POTW.

“Hauler.” Any person that delivers domestic or non-domestic waste by tanker truck for discharge to the POTW.

“Hazardous waste.” Any waste designated as hazardous under the provisions of 40 CFR Part 261 or a dangerous waste under Chapter 173-303 WAC.

“Hazardous waste pharmaceuticals.” Pharmaceuticals that are considered RCRA hazardous by the EPA. Excluded are non-prescription pharmaceuticals that have a reasonable expectation of being used/reused or reclaimed.

“Healthcare facility.” Any person that is lawfully authorized to:

A. Provide preventative, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of a human or animal or that affects the structure or function of the human or animal body; or

B. Distribute, sell, or dispense pharmaceuticals, including over-the-counter pharmaceuticals, dietary supplements, homeopathic drugs, or prescription pharmaceuticals.

“Holding tank waste.” Sewage, including typically associated solids, from domestic activities pumped from a septic tank serving one or more private residences or a chemical toilet, or tanks within recreational vehicles, campers, trailers, and vessels.

“Hearing Examiner” means the Tacoma Hearing Examiner, and the office thereof established pursuant to Tacoma Municipal Code (“TMC”) 1.23 to hear appeals of civil violations and compliance orders.

“Indirect discharge.” The discharge or the introduction of pollutants into the POTW from any source regulated under Section 307(b), (c) or (d) of the Federal Clean Water Act (33 U.S.C. 1317), or this chapter, including holding tank waste discharged by a non-domestic industrial user to the POTW.

“Industrial waste” or “Non-domestic waste.” A liquid or solid waste from industrial manufacturing processes, or trade or business activities distinct from domestic wastewater.

“Industrial user.” A non-domestic source of an indirect discharge or any other industrial or commercial facility or business that has a sewer connection to the municipal wastewater system, whether or not the industrial user discharges non-domestic wastewater.

“Industrial wastewater discharge permit.” A control mechanism issued by the Control Authority to an industrial user that allows, limits and/or prohibits the discharge of pollutants or flow to the POTW.

“Interference.” A discharge which alone or in combination with other discharges:

A. Inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and

B. Causes a violation of the NPDES permit (including an increase in the magnitude or duration of a violation) or the prevention of sewage sludge use or disposal in compliance with any of the following statutory or regulatory provisions or permits issued thereunder, or any more stringent state or local regulations: Section 405 of the Federal Clean Water Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

“Interlocal agreement.” An agreement entered into pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW.

“Instantaneous discharge limit.” The maximum or minimum concentration of a pollutant or a pollutant property based on a grab sample or direct measurement allowed to be discharged at any time.

“Local limits.” Discharge limits developed by the Control Authority in accordance with 40 CFR Section 403.5(c) and (d) which are set forth in this chapter.

“New source.” Shall be defined as set forth in 40 CFR Section 403.3(m).

“New source dental discharge facility.” A dental discharge facility that discharges to the POTW for the first time on or after July 15, 2017, or a dental discharge facility that transfers ownership on or after July 15, 2017.

“Mailing” or “service by mail” shall mean sending the document by regular, first-class mail, postage prepaid and properly addressed, to the last known address of the person subject to the document. The last known address shall be an address provided to the City by the person to whom the document is directed; if an address has not been provided to the City, the last known address shall be any of the following as they appear at the time the document is mailed: the address of the property where the violation is occurring, or the taxpayer address appearing for the



property on the official property tax information website for Pierce County; the address used for the payment of utilities for the property at which the violations are occurring; or the address appearing on the project permit application. Where service of the notice of violation is by mail, service shall be deemed complete upon the third day following the day upon which the notice is placed in the mail, unless the third day falls on a Saturday, Sunday, or federal legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day.

“Mitigate” means to take measures, subject to City approval, to minimize the harmful effects of the violation where abatement is either impossible or unreasonably burdensome.

“Municipal wastewater system.” Any sewer or appurtenant facility other than a side sewer, either owned or operated by the City.

“Normal domestic strength wastewater.” Wastewater, when analyzed in accordance with procedures established in 40 CFR Part 136, as amended, that contains no more than two hundred (200) mg/L of 5-Day Biochemical Oxygen Demand (BOD<sub>5</sub>) or two hundred and twenty-five hundred (225) mg/L of Total Suspended Solids.

“North American Industry Classification System Code” or “NAICS Code.” An industrial classification system developed by the United States Office of Management and Budget to classify business establishments for the collection, tabulation, presentation, and analysis of statistical data describing the U.S. economy. Also, see Standard Industrial Classification Code.

“Notice of violation” or “notice of civil violation” means a written statement, issued by a Control Authority, which contains the information required under TMC 1.82.050.B, and which notifies a person that the person is responsible for one or more violations.

“Notice of infraction” or “notice of civil infraction” means a written statement compliant with the rules of the Washington Supreme Court, representing a determination that a civil infraction has been committed, and issued under authority of Chapter 7.80 RCW or a civil infraction system approved by ordinance adopting a civil infraction system under authority of Chapter 7.80 RCW.

“NPDES Permit.” Waste discharge permits issued by the Washington State Department of Ecology to the City of Tacoma pursuant to Chapter 90.48 RCW and Section 402 of the Federal Clean Water Act that establish special and general conditions for discharging effluent from the City’s Central and North End treatment plant into waters of the state.

“Operator” Any person or group of persons, other than a facility manager, in control of or otherwise responsible for, through any arrangement, the management and operation of a facility or an entity or business enterprise subject to regulation under this chapter.

“Owner.” Any person holding title to, or an ownership interest in, a facility. It shall be presumed that the person identified in records of the Pierce County Assessor as the taxpayer is the owner of any such real property that constitutes a facility or upon which a facility is located.

“Pass through.” A discharge which exits the POTW into waters of the United States or the state in quantities or in concentrations which, alone or in conjunction with a discharge or discharges from other sources, causes a violation of any requirement of the NPDES Permit, including an increase in the magnitude or duration of a violation.

“Permittee.” Any person to whom an industrial wastewater discharge permit has been issued pursuant to this chapter.

“Person.” Any individual, partnership, co-partnership, firm, company, association, joint stock company, trust, estate, society, corporation, group, government, governmental agency or other legal entity, and their legal representatives, agents, or assigns. The definition includes all federal, state and local government entities.

“Personal service” shall mean handing the document to the person subject to the document or leaving it at the person’s dwelling or usual place of abode with some person of suitable age and discretion then residing therein, or leaving it at the person’s office or place of employment with a person in charge thereof.

“Posting” shall mean affixing a copy of the document in a conspicuous place on the property(ies) where the violation occurred, with at least one copy of such document placed at an entryway to the property or structure if an entryway exists. Service by posting shall be accomplished on the date of the posting in compliance with this section.

“pH.” The negative logarithm of the effective hydrogen-ion concentration or hydrogen activity in gram equivalents per liter used in expressing both acidity and alkalinity on a scale with values from 0 to 14, with 7 representing neutrality. Values lower than 7 are more acidic, and higher values are more alkaline.

“Pharmaceutical.” Any drug or dietary supplement for use by humans or other animals; any electronic nicotine delivery system (*e.g.*, electronic cigarette or vaping pen), or any liquid nicotine (e-liquid) packaged for retail for use in electronic nicotine delivery systems (*e.g.*, pre-filled cartridges or vials). This definition includes, but is not limited to dietary supplements, as defined by the Federal Food, Drug and Cosmetic Act; prescription drugs, as defined by 21 CFR 203.3(y); OTC drugs; homeopathic drugs; compounded drugs; investigational new drugs; pharmaceuticals remaining in nonempty containers; personal protective equipment contaminated with pharmaceuticals; and clean-up material from spills of pharmaceuticals. This definition does not include dental amalgam or sharps.

“Pollutant.” Any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, explosives, munitions, medical waste, chemical wastes, corrosive substance, biological material, biological nutrient, toxic substance, radioactive materials, malodorous substance, wrecked or discharged equipment, rock, sand, slurry, cellar dirt, untreatable waste, or industrial, domestic, or agricultural wastes and certain characteristics of wastewater (*e.g.* pH, temperature, TSS turbidity, color, BOD5, COD, toxicity or odor).

“POTW or “publicly owned treatment works.” Means a treatment works, as defined by 33 U.S.C. Section 1292 (2), which is owned and operated by the City of Tacoma. The term generally refers to any devices and systems used in the conveyance, storage, treatment, recycling and reclamation of municipal sewage and industrial wastes of a liquid nature. A reference to the POTW means and refers to the POTW owned or operated by the City, unless a different meaning is otherwise plainly required.

“POTW Treatment Plant.” That portion of the POTW known as the City of Tacoma’s North-End treatment plant that provides treatment of municipal wastewater.

“Pretreatment.” The reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to, or in lieu of, discharging or otherwise introducing such pollutants into the POTW through physical processes, biological processes, or by other processes or means, except as prohibited by 40 CFR Section 403.6(d).

“Pretreatment facilities.” Wastewater treatment equipment, units, devices, facilities or portions thereof designed to provide pretreatment of wastewater.

“Pretreatment program.” A federal, state and local program administered by the City of Tacoma that requires industrial and commercial sources of non-domestic wastewater to treat wastewater prior to discharging it to the POTW.

“Pretreatment interlocal agreement.” An interlocal agreement entered into by and between the City and the City of Tacoma governing the conditions upon which the City of Tacoma will accept wastewater from the City and requiring that the City implement pretreatment standards and requirements in the City that are no less stringent and are as broad in scope as the City of Tacoma’s applicable standards and requirement.

“Pretreatment requirements.” Any substantive or procedural requirement related to pretreatment of wastewater, other than a pretreatment standard imposed on an industrial user.

“Pretreatment standard.” Any regulation containing pollutant limitations promulgated by the EPA in accordance with Section 307(b) and(c) of the Federal Clean Water Act or promulgated by the Washington State Department of Ecology in accordance with Chapter 90.48 RCW which applies to industrial users. The term includes prohibited discharge limits established pursuant to 40 CFR Section 403.5 and other standards, BMPs, local limits, and specific prohibitions established by the Control Authority. See also, definition of “Applicable pretreatment standard.”

“Private side sewer” and “side sewer.” The sewage conveyance pipe owned by the property owner that extends from approximately two feet outside of a building or structure to the connection at the municipal wastewater system. In most circumstances, a portion of the private side sewer/side sewer extends into public streets or alleys connecting to the public sewer main.

“Publication” shall mean publication as set forth in RCW 4.28.100 and 4.28.110 as now, or may be hereafter amended.

“Regulation” or “City regulation” means and includes any of the following:

A. Any title, chapter, section, or subsection of the FMC, as now or may be hereafter amended, renumbered, or recodified, that is by law made subject to enforcement under the provisions of this chapter;

B. All standards, regulations, rules, requirements, and procedures, and any amendments thereto, adopted or promulgated by the City Council, or by a City officer pursuant to or under authority of the FMC or state law, that are by law made subject to enforcement under the provisions of this chapter;

C. The terms and conditions of any project permit or approval issued or granted by the City pursuant to or under authority of the FMC or state law, that are by law made subject to enforcement under the provisions of this chapter;

D. The terms and conditions of any order, compliance order, permit, or license issued or granted by a City official pursuant to or under authority of the FMC or state law, that are by law made subject to enforcement under the provisions of this chapter; and

E. The terms and conditions of any concomitant or development agreement, with the City, and any amendments thereto, which has been issued, granted or authorized by the City pursuant to provisions of the FMC or state law, that are by law made subject to enforcement under the provisions of this chapter.

“Remediate” means to restore to a condition that complies with the development code or, for sites that have been degraded upon prior ownerships, to restore to a condition that does not pose a probable threat to the environment or to the public health, safety, or welfare.

“Repeat violation” means, as evidenced by the prior issuance of a correction notice, compliance order, a notice of violation or a notice of civil infraction, that a violation has occurred on the same development site, property, premises, or structure within a two-year period, or the responsible person has committed a violation elsewhere within the City within a two-year period. To constitute a repeat violation, the violation need not be the same type of violation as the prior violation.

“Responsible person.” Any person made responsible for compliance with the provisions of this chapter, any regulations established pursuant to this chapter, or any conditions of a permit, authorization or approval made or given pursuant to this chapter. Responsible persons are generally set forth at FMC 20.30.020.B.

“Reverse distributor.” Any person that receives and accumulates prescription pharmaceuticals that are potentially creditable hazardous waste pharmaceuticals for the purpose of facilitating or verifying manufacturer credit. Any person, including forward distributors, third-party logistics providers, and pharmaceutical manufacturers, that processes prescription pharmaceuticals for the facilitation or verification of manufacturer credit is considered a reverse distributor.

“Septic tank waste” or “Domestic septage.” Liquid or solid material removed from a septic tank, cesspool, holding tank, or a similar system that receives only domestic waste (household, non-commercial, non-industrial sewage).

“Side Sewer and Sanitary Sewer Availability Manual.” Refers to the most recent version of the Side Sewer and Sanitary Sewer Availability Manual as adopted or amended by the Tacoma City Council.

“Significant industrial user” means:

A. All industrial users subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and

B. Any other industrial user that discharges an average of 25,000 gpd or more of process wastewater to the POTW (excluding domestic, noncontact cooling and boiler blowdown wastewater); or contributes a process wastestream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the POTW; or is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW’s operation; or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(F)(6), as found in 55 FR 30128, July 24, 1990).

“Slug discharge.” Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW’s regulations, local limits, or Permit conditions. This includes a discharge which exceeds the hydraulic or design of an industrial user’s treatment system or any part of the treatment unit.

“Stop-Use Order” means a compliance order, or that part of a compliance order, directing the responsible person to immediately cease and desist a use identified in the order.

“Stop-Work Order” means a compliance order, or that part of a compliance order,



directing the responsible person to immediately cease and desist, and/or to take, certain action identified in the order.

“Stormwater.” That portion of precipitation, including snowmelt, that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a receiving water or stormwater facility.

“Supplemental fees.” Expenses and costs the Control Authority incurs to address and respond to a violation of Chapter 20.30 FMC, and which shall include, but not be limited to: (i) personnel costs, both direct and indirect; (ii) costs to investigate, contain, and abate the discharge, including cleaning up any contamination caused by the discharge that may be present within the POTW, at the point of discharge, or in the receiving environment; (iii) costs to respond to a discharge causing pass through or interference; (iv) costs to document and enforce a violation of Chapter 20.30 FMC; (v) costs to hire a contractor(s) or consultant(s) to respond to such violations; (vi) laboratory costs and analytical expenses; (vii) costs for equipment, materials, and supplies; (viii) mobilization, transportation, treatment, storage, and disposal costs; (ix) attorney’s fees, when authorized; (x) costs required for printing or mailings; and (xi) costs to collect unpaid supplemental fees.

“Tampering” or “tamper.” Any action taken to alter, bypass, damage, or disable a monitoring device that would render it inaccurate.

“Threatened discharge.” The existence of any condition or practice which reasonably could be expected to lead to an unauthorized discharge of wastewater, that may present an imminent danger or threat to the health and welfare of persons or the environment, or that threatens to interfere with the operation of the POTW.

“Total suspended solids” or “TSS.” Solids that either float on the surface of or are suspended in water, sewage, or other liquid, and which are removable by laboratory filtering in accordance with procedures approved in 40 CFR Part 136, as amended.

“Toxic pollutant.” Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the EPA under Section 307(a) of the Federal Clean Water Act or as otherwise listed in 40 CFR Part 122, Appendix D.

“Upset.” An exceptional incident in which there is unintentional and temporary noncompliance with the applicable pretreatment standards because of factors beyond the reasonable control of the industrial user. The term “upset” does not include noncompliance to the extent it is caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation thereof.

“Violation” means an act or omission proscribed by a provision of a regulation, which act or omission is by law made subject to enforcement under the provisions of this chapter.

“Wastewater” or “Wastestream.” Liquid and water-carried industrial wastes, holding tank waste, and domestic wastes from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated.

“Written instrument” means any paper, document, or other instrument containing written or printed matter or its equivalent, or any stamp, seal, certification, trademark, or other evidence or symbol of value, right, privilege, or identification.

## GENERAL SEWER USE REQUIREMENTS

### 20.30.100 Prohibited discharge standards.

A. General Prohibitions. No industrial user shall introduce to the municipal wastewater system any pollutant which causes pass through or interference. These general prohibitions apply to all industrial users of the municipal wastewater system whether they are subject to pretreatment standards, or any other national, state, or local pretreatment requirements.

B. Specific prohibitions. No industrial user shall introduce or cause to be introduced to the municipal wastewater system the following substances or combination of substances:

1. Any substance which either alone or by interaction with other substances create a fire or explosive hazard in the municipal wastewater system or POTW, including, but not limited to wastestreams with a closed-cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test method specified in 40 CFR Section 261. The discharge restrictions and prohibitions of dangerous waste regulations set forth in Chapter 173-303 WAC shall apply to discharges under this chapter;

2. Wastewater having a pH of less than 5.0, or more than 11.0, or any wastewater capable of causing corrosive structural damage to the municipal wastewater system or POTW or equipment except as authorized by an industrial wastewater discharge permit, special approved discharge authorization, or other control mechanism issued by the Control Authority;

3. Solid or viscous pollutants or substances in amounts which cause obstruction to the flow in the municipal wastewater system or POTW or other interference;

4. Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause pass through or interference;

5. Any pollutant, including oxygen-demanding pollutants released in a discharge at a flow rate and/or concentration which will cause interference;

6. Wastewater that exceeds 100 degrees Fahrenheit. The Control Authority may authorize a discharge above 100 degrees Fahrenheit if it determines such discharge will not cause interference or influent temperature at the POTW treatment plant to exceed 104 degrees Fahrenheit.

7. Pollutants which result in the presence of toxic gases, vapors, or fumes within the municipal wastewater system or POTW in a quantity which may cause acute worker health and safety problems or pollutants which alone or in combination with other pollutants, or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent or interfere with entry into the municipal wastewater system or POTW for maintenance and repair;

8. Trucked or hauled pollutants, except at discharge points as authorized by an industrial wastewater discharge permit, special approved discharge authorization, or other control mechanism issued by the Control Authority, as set forth in this chapter;

9. Wastewater which contains grease or oil or any other substances that will solidify or become discernibly viscous at temperatures between thirty-two degrees (32°) Fahrenheit (0° Celsius) and one hundred fifty degrees (150°) Fahrenheit (65.5° Celsius);

10. Wastewater generated as a result of wastes pumped from gravity grease interceptors, hydromechanical grease interceptors, or grease traps, sand-oil separators or other storage tanks or treatment units without the approval of the Control Authority;

11. Wastewater which imparts color to the POTW's effluent such as, but not limited to, dye wastes and vegetable tanning solutions;

12. Wastewater containing radioactive wastes or isotopes except in compliance with applicable state or federal regulations;

13. Medical wastes that cause or contribute to pass through or interference;

14. Unless approved by the Control Authority under extraordinary circumstances, such as lack of direct discharge alternatives or need to augment sewage flows due to septic conditions (as required under WAC 173-216-050):

a. Non-contact cooling water in significant volumes;

b. Stormwater or other direct inflow sources; and

c. Wastewater significantly affecting system hydraulic loading, which does not require treatment or would not be afforded a significant degree of treatment by the POTW;

15. Any substance that causes the Control Authority to violate its NPDES Permit(s) or applicable federal or state water quality standards;

16. Sludge, screenings, or other residues from the pretreatment of industrial wastes or from industrial processes except as authorized by an industrial wastewater discharge permit, special approved discharge authorization, or other control mechanism issued by the Control Authority;

17. Any slug discharge;

18. Any substance which may cause the POTW's effluent or treatment residues, sludge or sludge products or scums, to be unsuitable for reclamation or reuse, or which otherwise interferes with the reclamation process;

19. Any discharge containing a substance which is regulated under Chapter 173-303 WAC, unless authorized by an industrial wastewater discharge permit, special approved discharge authorization, or other control mechanism issued by the Control Authority. Control mechanisms issued under this subsection shall comply with applicable discharge requirements set forth in Chapter 173-303 WAC; and

20. Any pesticides, herbicides, or fungicides that cause or contribute to pass through, interference or negative impact to the POTW. Industrial users shall not discharge wastewater to the municipal wastewater system that is generated from the rinsing of any container that contains or contained any concentrated or formulated pesticide, herbicide or fungicide unless approved by the Control Authority.

C. Hazardous waste pharmaceuticals. Healthcare facilities that generate, accumulate or otherwise handle hazardous waste pharmaceuticals, and reverse distributors engaged in the management of prescription hazardous waste pharmaceuticals, shall not discharge pharmaceuticals to the municipal wastewater system or POTW which are listed as hazardous waste under the federal Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq., and its implementing regulations), or which are regulated as hazardous waste under the same law based on the characteristics of ignitability, corrosivity, reactivity, or toxicity.

D. Storage. No chemicals, materials, or other substances, including but not limited to, paints, solvents, boiler or water treatment chemicals, sludges, chemicals, or wastes shall be stored in proximity to a floor drain or other openings used to collect and convey, directly or indirectly, wastewater to the municipal wastewater system unless secondary containment is provided. The requirement for secondary containment is waived if physical barriers exist that will prevent entry of chemicals, materials, or other substances to floor drains or other openings used to collect and convey wastewater.

E. Dilution prohibited. Dilution is prohibited as a substitute for wastewater treatment except where authorized by an applicable pretreatment standard or requirement. No industrial user shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The Control Authority may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations is appropriate.

F. Local limits.

1. No industrial user issued an industrial wastewater discharge permit shall discharge, or cause to be discharged, wastewater containing pollutants that exceed the following limits:

Table 20.30.100.F - 1

Pollutant	Daily Maximum Discharge Limits <sup>(a)</sup> for IUs discharging to Central Treatment Plant
Arsenic	0.23
Cadmium	0.103
Chromium	4.74
Copper	1.46
Lead	0.427
Mercury	0.033
Molybdenum	0.55
Nickel	1.12
Selenium	0.14
Silver	0.64
Zinc	2.44
5-Day Biochemical Oxygen Demand (BOD <sub>5</sub> ), lbs/day <sup>(b)</sup>	No Limit
Total Suspended Solids (TSS), lbs/day <sup>(b)</sup>	No Limit
Ammonia, lbs/day <sup>(b)</sup>	5,082.6
Bis-2(ethylhexyl)phthalate	No Limit

<sup>(a)</sup> All Pollutants as Total and in mg/L unless otherwise specified.

(b) This limit is the total mass in pounds per day (lbs/day) that are available to allocate to all significant industrial users and other designated and permitted non-significant industrial users.

G. The Control Authority may implement local limits through allocation of the Maximum Allowable Industrial Load to significant industrial users and specific permitted non-significant industrial users that correspond to the uniform concentration local limits shown in table 20.30.100.F - 1.

H. The following limits shall apply to wastewaters that are discharged from:

1. Groundwater cleanup of petroleum or gasoline underground storage tanks or other remediation wastewaters containing these pollutants;
2. Discharges where one or more of these pollutants are present; or
3. Where these pollutants are appropriate surrogates.

It shall be unlawful for any industrial user to discharge or cause to be discharged any waste or wastewater to the municipal wastewater system that exceeds the following limits:

Table 20.30.100.H - 1

Pollutant	Daily Maximum Limit (mg/L)
Benzene	0.050
BTEX	0.750

I. The Control Authority may establish more stringent pollutant limits, additional site-specific pollutant limits, best management practices, or additional pretreatment requirements when, in the judgment of the Control Authority, such limitations, practices or requirements are reasonably necessary to ensure compliance with the provisions of this chapter.

### **20.30.110 Categorical pretreatment standards.**

A. Industrial users shall comply with the categorical pretreatment standard(s) found at 40 CFR Chapter I, Subchapter N, Parts 405-471.

B. Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the Control Authority may impose equivalent concentration or mass limits in accordance with this section and 40 CFR Part 403.6(c).

C. When categorical pretreatment standards are expressed only in terms of a mass of pollutant per unit of production, the Control Authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration when calculating effluent limitations applicable to individual industrial users. The industrial user shall supply appropriate actual or projected long-term production rates for the unit of production specified in order to facilitate this process pursuant to 40 Part CFR 403.6(c)(2), as required by the Control Authority.



D. The Control Authority may allow wastewater subject to a categorical pretreatment standard to be mixed with other wastewaters prior to treatment. In such cases, the industrial user shall identify all categorically regulated wastestreams and provide sufficient information for each non-categorical wastestream to determine whether it should be considered dilute for each pollutant. In such situations, the Control Authority shall apply the appropriate formula as found at 40 CFR Part 403.6(e) to determine appropriate limits.

E. Equivalent mass limits.

1. When a categorical pretreatment standard is expressed only in terms of pollutant concentrations, an industrial user may request that the Control Authority convert the limits to equivalent mass limits. The determination to convert concentration limits to mass limits is within the discretion of the Control Authority. The Control Authority may establish equivalent mass limits if the industrial user meets all of the following conditions:

- a. Employ, or demonstrate that it will employ, water conservation methods and technologies that substantially reduce water use during the term of its control mechanism;
- b. Currently use control and treatment technologies adequate to achieve compliance with the applicable categorical pretreatment standard, and not have used dilution as a substitute for treatment;
- c. Provide sufficient information to establish the facility's actual average daily flow rate for all waste streams, based on data from a continuous effluent flow monitoring device, as well as the facility's long-term average production rate. Both the actual average daily flow rate and the long-term average production rate must be representative of current operating conditions;
- d. Not have daily flow rates, production levels, or pollutant levels that vary so significantly that, in the judgement of the Control Authority, are not appropriate for application of equivalent mass limits; and
- e. Demonstrate that it has consistently complied with all applicable categorical pretreatment standards during the period prior to the industrial user's request for equivalent mass limits.

2. An industrial user subject to equivalent mass limits shall:

- a. Maintain and effectively operate control and treatment technologies adequate to achieve compliance with the equivalent mass limits;
- b. Continue to record the facility's flow rates by a continuous effluent flow monitoring device;
- c. Continue to record the facility's production rates;
- d. Notify the Control Authority if production rates are expected to vary by more than twenty percent (20%) from the submitted baseline production rates. The Control Authority may reassess and revise equivalent limits as necessary to reflect changed conditions; and
- e. Continue to employ the same or comparable water conservation methods and technologies so long as it discharges under its equivalent mass limit.

3. Equivalent mass limits:

- a. Shall not exceed the product of the actual average daily flow rate of the regulated process(es) of the industrial user and the applicable concentration-based daily maximum and monthly average standards (and the appropriate unit conversion factor);
- b. Shall, upon notification of a revised production rate, be reassessed and recalculated as necessary to reflect changed conditions at the facility; and
- c. May be retained in subsequent industrial wastewater discharge permits if the industrial user's actual average daily flow rate was reduced solely as a result of the implementation of water conservation methods and technologies, and the actual average daily flow rates used in the original calculation of the equivalent mass limit were not based on the use of dilution as a substitute for treatment pursuant to FMC 20.30.100.E. The industrial user shall also be in compliance with 40 CFR Section 403.17.

F. The Control Authority may convert the mass limits of the categorical pretreatment standards at 40 CFR parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual industrial users. When converting such limits to concentration limits, the Control Authority must use the concentrations listed in the applicable subparts of 40 CFR parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by this chapter.

G. Equivalent limitations are deemed pretreatment standards for the purposes of this chapter and Section 307(d) of the Federal Clean Water Act. The Control Authority must document how the equivalent limits were derived and make this information publicly available. Once incorporated into its industrial wastewater discharge permit, an industrial user shall comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.

H. When a categorical pretreatment standard specifies one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or 4-day average, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

I. Any industrial user operating under an industrial wastewater discharge permit that incorporates equivalent mass or concentration limits calculated from a production-based standard shall notify the Control Authority within two (2) business days after the industrial user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any industrial user that fails to notify the Control Authority of such anticipated change will be required to meet the mass or concentration limits in its control mechanism that were based on the original estimate of the long-term average production rate.

### **20.30.120 State requirements.**

A. All pollutants discharged from a commercial or industrial operation to the municipal wastewater system shall satisfy all applicable requirements set forth in Chapter 173-216 WAC.

B. Any person who constructs or modifies or proposes to construct or modify wastewater treatment facilities shall comply with the submittal requirements set forth in Chapter 173-240 WAC. No person may commence construction or modification of a wastewater treatment

facility covered under Chapter 173-340 WAC without first submitting engineering reports and plans and specifications to the Control Authority for its review and written acceptance. The Control authority, acting as an agent of the City, is authorized as a delegated unit of local government under RCW 90.48.110(2) to review such submittals.

C. Industrial users shall apply to the Control Authority for an industrial wastewater discharge permit at least ninety (90) days prior to the discharge of any pollutants other than domestic wastewater, or wastewater the Control Authority has determined to be similar in character and strength to domestic wastewater, and that there is no potential for such discharge to adversely affect the POTW.

D. All significant industrial users shall apply for, obtain, and maintain compliance with, an industrial wastewater discharge permit from the Control Authority, or approval of the Control Authority of a transfer of an existing permit to the industrial user, prior to discharging pollutants.

E. Claims of confidentiality shall be governed by FMC 20.30.910.

F. Applicants for a new industrial wastewater discharge permit, or permit reissuance or modification, which allows a new or increased pollutant loading shall publish notice for each application in the format provided by the Control Authority, and in accordance with the public notice requirements set forth in FMC 20.30.470.

G. The Control Authority may require the applicant to also mail this public notice to persons who have expressed an interest in being notified, and to state agencies and local governments with a regulatory interest, and to post the public notice on the facility. If the Control Authority determines there is sufficient public interest, it will hold a public meeting following the requirements of WAC 173-216-100. The Control Authority may, in its discretion, assume responsibility for public notice requirements for any applicant, and may waive the requirements of this section for any industrial user who is not classified as a significant industrial user.

H. Discharge restrictions set forth in Chapter 173-303 WAC (Dangerous Waste) shall apply to all industrial users.

I. All required monitoring data shall be analyzed by a laboratory registered or accredited under the provisions of Chapter 173-50 WAC, except for flow, temperature, settleable solids, conductivity, pH, turbidity, and internal process control parameters. However, if the laboratory analyzing samples for conductivity, pH, or turbidity must otherwise be accredited, it shall also be accredited for these parameters.

### **20.30.130 AKART.**

Industrial users shall apply all known, available, and reasonable methods of prevention, control and treatment to wastewater discharges as required by Chapter 90.48 RCW.

### **20.30.140 Industrial user survey form.**

Any person whose activities may, in the judgement of the Control Authority, be a source of nondomestic wastewater to the municipal wastewater system shall, upon request of the Control Authority, complete and submit an industrial user survey form. Industrial users who seek to modify or increase an existing discharge of a nondomestic waste stream to the municipal wastewater system shall submit an updated industrial user survey form to the Control Authority prior to modifying or increasing its discharge. Accurate completion of the industrial user survey

form is a condition of initial and continued discharge to the municipal wastewater system. Information contained within the industrial user survey form shall be used by the Control Authority to categorize a business operation and determine the proper level of regulation under this chapter, including whether an industrial user is a significant industrial user. Failure to comply with this section is a violation of this chapter subject to the enforcement provisions of FMC 20.30.1200.

**20.30.150 Payment of rates and fees.**

Persons regulated by this chapter shall pay the applicable rates and fees as set forth in this chapter.

## **PRETREATMENT AND MONITORING FACILITIES**

### **20.30.200 Treatment required.**

An industrial user shall provide wastewater treatment. Such treatment shall comply with this chapter and shall also achieve compliance with all applicable federal, state, and local pretreatment standards and requirements, within the time limitations specified by the EPA, the Washington State Department of Ecology, or the Control Authority, whichever is more stringent. The wastewater treatment can be obtained by physical process, biological process, or by other process or means, except as prohibited by 40 CFR Section 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug discharges that might interfere with or otherwise be incompatible with the POTW. Where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR Section 403.6(e). Any pretreatment facilities necessary for compliance with this chapter shall be provided, operated and maintained at the industrial user's expense and satisfy applicable requirements for content, review and acceptance of engineering reports, plans and specifications for construction and modification of pretreatment facilities, including an operation and maintenance manual as set forth in Chapter 173-240 WAC.

The Control Authority may, in its sole discretion, waive the requirement for a three-step submission of documents and require instead conceptual plans with such information from the engineering report and operation manual that the Control Authority determines will demonstrate compliance with this chapter. Construction or modification of a pretreatment facility shall not commence until engineering reports, plans and specifications for the project have been submitted to and approved by the Control Authority. Unless waived by the Control Authority, such reports shall be prepared under the supervision of, and bear the seal of, a professional engineer licensed in accordance with Chapter 18.43 RCW. The review and acceptance of the engineering reports, plans and specifications, and operation and maintenance manual, shall in no way relieve the industrial user from its obligation to comply with the provisions of this chapter, including modification of its pretreatment facility as necessary to produce a discharge acceptable to the Control Authority under the provisions of this chapter.

### **20.30.210 Proper operation and maintenance.**

Industrial users shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the industrial user. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by an industrial user when the operation is necessary to achieve or assure compliance with conditions of its industrial wastewater discharge permit. Calibration of meters and monitoring equipment shall be performed in accordance with manufacturer specifications.

### **20.30.220 Monitoring facilities.**

The Control Authority may require an industrial user to install at the industrial user's expense, monitoring facilities or equipment that allow for the representative sampling and accurate observation of wastewater discharges. Whether constructed on public or private property, the monitoring facilities shall be constructed in accordance with the Control Authority's



requirements and all applicable City construction standards and specifications. Monitoring equipment and structures shall be maintained in proper working order, calibrated as required by manufacturer's specifications, and kept safe and accessible at all times for inspection by the Control Authority. The monitoring equipment shall be located and maintained on the industrial user's premises outside of the building footprint unless otherwise approved by the Control Authority. The monitoring facility shall include an enclosure that can be locked during sampling or monitoring or other inspection with a lock provided by the Control Authority. When such a location would be impractical, the Control Authority may allow such facility to be constructed in the public street or easement area, with the approval of the City department having jurisdiction over street occupancy according to such terms and conditions as it may impose. No industrial user shall cover any manhole, sewer cleanout, or other openings in the wastewater collection system with earth, paving, or otherwise render it inaccessible.

#### **20.30.230 Operating pretreatment facilities.**

The Control Authority may require an industrial user to provide confirmation that treatment facility operators have been properly trained regarding treatment facility operation and maintenance (O&M) practices.

#### **20.30.240 Wastewater discharge control.**

The Control Authority may require an industrial user to restrict discharge during peak flow periods, designate that certain wastewater be discharged to the municipal wastewater system at designated locations, relocate and/or consolidate points of discharge, separate domestic waste streams from industrial waste streams, and require such other conditions as may be necessary to protect the POTW.

#### **20.30.250 Flow equalization.**

The Control Authority may require any industrial user discharging to the municipal wastewater system to install and maintain, on its property and at its expense, a suitable storage and flow control facility to ensure equalization of flow. An industrial wastewater discharge permit may be issued solely for flow equalization.

#### **20.30.260 Multi-tenant buildings.**

When more than one industrial user is able to discharge into a common service line, the Control Authority may require installation of separate monitoring equipment or structures for each industrial user.

#### **20.30.270 Flow, pH, LEL and other meters and equipment.**

If the Control Authority determines an industrial user is required to measure and report: (1) wastewater flow; (2) discharge process wastewaters necessitating continuous pH measurement; or (3) discharge wastewater that may contain flammable substances or other pollutants of concern, the Control Authority may require the industrial user to install and maintain, at the industrial user's expense, approved meters and equipment.

**20.30.280 Tampering with water metering devices prohibited.**

No person shall install, change, bypass, adjust, remove, alter, or otherwise tamper with any water metering device or any piping arrangement connected to a metering device to show the quantity of water used at or discharged from the facility is more or less than the actual quantity used or discharged.

## **INDUSTRIAL WASTEWATER DISCHARGE PERMITTING**

### **20.30.300 Permits required.**

A. All significant industrial users proposing to connect to or discharge wastewater to the municipal wastewater system shall apply for and obtain an industrial wastewater discharge permit from the Control Authority. An existing significant industrial user that has filed a timely wastewater permit application in accordance with this chapter may continue to discharge if authorized by the Control Authority.

B. The Control Authority may determine that an industrial user subject to categorical pretreatment standards under 40 CFR Section 403.6 and 40 CFR chapter I, subchapter N is a non-significant categorical industrial user rather than a significant industrial user on a finding that the industrial user never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

1. The industrial user has consistently complied with all applicable categorical pretreatment standards and requirements;
2. The industrial user annually submits the certification statement required in Section 6.14 B [see 40 CR 403.12(q)], together with any additional information necessary to support the certification statement; and
3. The industrial user does not and never has discharged untreated concentrated wastewater to the municipal wastewater system.

C. Upon finding that an industrial user meeting the criteria in subsection B above has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirements, the Control Authority may, at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.

### **20.30.310 Industrial wastewater discharge permitting – Existing industrial users.**

An industrial user with an expiring industrial wastewater discharge permit shall apply for a new permit by submitting a complete permit application at least one hundred eighty (180) days prior to the expiration of the industrial user's existing industrial wastewater discharge permit. The industrial user shall file a permit application on forms provided by the Control Authority containing the information required pursuant to this chapter. A permit application containing incomplete or inaccurate information will not be processed and will be returned to the industrial user for revision.

### **20.30.320 Industrial wastewater discharge permitting – New sources and new industrial users.**

A new source or new industrial user proposing to begin or recommence a discharge to the municipal wastewater system and who is required to obtain an industrial wastewater discharge permit, special approved discharge authorization, or other control mechanism, shall submit an industrial wastewater discharge permit application to the Control Authority. A new source or new industrial user shall not discharge wastewater to the municipal wastewater system without

first receiving an industrial wastewater discharge permit, special approved discharge authorization, or other control mechanism issued by the Control Authority. Applications for an industrial wastewater permit shall be filed at least one hundred eighty (180) days prior to the desired date of discharge unless otherwise specified by the Control Authority, and include the information required pursuant to this chapter. A permit application containing incomplete or inaccurate information will not be processed and will be returned to the industrial user for revision.

### **20.30.330 Industrial users.**

The Control Authority may require any industrial user to apply for and obtain an industrial wastewater discharge permit, a zero discharge industrial wastewater discharge permit, or other control mechanism with conditions necessary to assure compliance with this chapter.

### **20.30.340 Industrial wastewater discharge permitting – Application contents.**

A. All industrial users required to obtain an industrial wastewater discharge permit shall apply by using a form provided by the Control Authority. Industrial users shall submit the following information as part of their permit application unless waived by the Control Authority:

1. Identifying Information. The industrial user shall submit the name and physical address of the facility, including the legal name and trade name, if any, of the owner(s), operator(s), duly authorized representative of the industrial user, and, if different than the duly authorized representative of the industrial user, the facility manager, and mailing address and contact information for each person listed;
2. Permits. The industrial user shall submit a list of any environmental permits held by or for the facility;
3. Description of Operations. The industrial user shall submit the following information regarding facility operations: (i) a brief description of the nature and average rate of production (including each product produced by type, amount, process, and rate of production); (ii) the Standard Industrial Classification(s) (SIC Code) and/or the NAICS Code that applies to each operation; (iii) a list of all raw materials and chemicals used (average and maximum rates) or stored at the facility that could be accidentally or intentionally discharged to the POTW; (iv) the number of employees and a general description of the duties they perform; (v) the hours of operation; (vi) a description of each product produced by type and amount, including the rate of production, and the process used for each product produced; (viii) the types of wastes generated on a routine and periodic basis; (ix) the times and durations when wastes will be discharged; and (x) sampling locations and provisions for monitoring discharges. The description shall also include a schematic process diagram showing each process step, wastestream, treatment step, internal recycling process, and points of discharge to the POTW. This diagram shall identify which wastestreams are subject to a categorical pretreatment standard. The industrial user shall also submit site plans, floor plans, mechanical and plumbing plans and details showing all sewers, sewer connections, floor drains, inspection manholes, and sampling chambers by size, location, and elevation;

4. Flow Data. The industrial user shall submit information showing the estimated or actual measured average daily and maximum daily flow, in gpd, to the POTW from regulated process streams and other wastestreams, if necessary to allow the use of the combined wastestream formula set forth in 40 CFR 403.6(e);

5. Pollutant Data. The industrial user shall submit: (i) the categorical pretreatment standard applicable to each regulated process; (ii) the results of sampling and analysis, as required by the Control Authority, that identify the nature and concentration (or mass) of regulated pollutants in the discharge from each regulated process; and (iii) the estimated peak instantaneous, daily maximum and long-term average discharge concentrations (and mass) based on sampling results. All samples taken shall be representative of daily operations and shall conform to the sampling collection and analytical procedures outlined in FMC 20.30.800 and FMC 20.30.810 and applicable program guidance. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) for a categorical industrial user covered by a categorical pretreatment standard, this adjusted limit, along with supporting data, shall be submitted as part of the application;

6. Slug discharge control plan for significant industrial users as described in FMC 20.30.670 shall be submitted. The Control Authority may require industrial users regulated under FMC 20.30.330 to also submit a slug discharge control plan;

7. A statement that the industrial user acknowledges, understands, and agrees that the permittee facility will be subject at reasonable times to inspections and gathering of samples by the Control Authority to determine whether an industrial user is complying with the requirements of this chapter and any industrial wastewater discharge permit or other control mechanism issued thereunder;

8. Other Information. Any other information the Control Authority deems necessary to prepare an industrial wastewater discharge permit;

9. Certification. The industrial user shall certify that the application was reviewed by an authorized representative of the industrial user in accordance with FMC 20.30.350; and

10. Incomplete Information. Incomplete or inaccurate information will not be processed and will be returned to the industrial user for revision.

### **20.30.350 Certification requirements.**

All industrial wastewater discharge permit applications, including applications for transfer, modification or reissuance, industrial user reports, survey forms and any other submittals required by this chapter shall be signed by an authorized representative of the industrial user and contain at a minimum the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my



knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

**20.30.360 Special approved discharge authorization.**

A. The Control Authority may, at its discretion, issue a special approved discharge authorization or other control mechanism for a short-term discharge to the municipal wastewater system, but in no event to exceed 365 days for each special approved discharge. Such authorizations may include discharge requirements, limitations, and conditions that the Control Authority determines are necessary to comply with this chapter. The Control Authority shall provide the industrial user with an application form that requires specific information and data to be provided to allow the Control Authority to evaluate and determine whether or not a special approved discharge to the municipal wastewater system will be authorized. The information and data required shall be provided to the Control Authority no later than thirty (30) days prior to the date that discharge is being proposed unless an alternative submittal date is authorized by the Control Authority. The fee established pursuant to Section 12.08B.250.A of the Tacoma Municipal Code, as now or may hereafter be amended, for a special approved discharge authorization is hereby adopted as the fee for a special approved discharge authorization. The rate established pursuant to Section 12.08B.250.B of the Tacoma Municipal Code, as now or may hereafter be amended, for a special approved discharge is hereby adopted as the rate for a special approved discharge. The Control Authority shall assess and collect applicable rates and fees. The Control Authority may revoke or suspend the special approved discharge authorization at its discretion.

B. The Control Authority may require a proposed or authorized discharger, at their cost, to gather representative samples for total suspended solids (TSS), biochemical oxygen demand (BOD), total petroleum hydrocarbons (TPH) or any other pollutants suspected to be present in the wastewater, stormwater or ground water. The proposed or authorized discharger shall have such samples analyzed at a state accredited laboratory and submit the results to the Control Authority. The Control Authority will determine sampling frequency.

## **INDUSTRIAL WASTEWATER DISCHARGE PERMIT ISSUANCE**

### **20.30.400 Industrial wastewater discharge permit duration.**

An industrial wastewater discharge permit shall be issued for a specified period of time, not to exceed five (5) years from the effective date of the permit. An industrial wastewater discharge permit may be issued for a period of less than five (5) years at the discretion of the Control Authority. Each industrial wastewater discharge permit shall include an expiration date, subject to the provisions of FMC 20.30.450. Approval of a modification or transfer of an industrial wastewater discharge permit shall not modify the duration of the permit.

### **20.30.410 Industrial wastewater discharge permit contents.**

A. Industrial wastewater discharge permits shall include conditions deemed necessary by the Control Authority to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, protect against damage to the POTW, and satisfy the requirements of this chapter.

B. Industrial wastewater discharge permits issued to significant industrial users and categorical industrial users shall contain all the conditions and information set forth below in FMC 20.30.410.B.1 – B.10; provided that, control mechanisms issued to other industrial users may contain some or all of the same conditions, as determined by the Control Authority to ensure compliance with this chapter:

1. The industrial wastewater discharge permit issuance date, expiration date, and effective date;
2. The legal name, and trade name if any, and address for corporate offices of the owner(s) and operator(s);
3. The name and contact information of the duly authorized representative of the industrial user, the mailing address at which such representative may receive notice(s) from the Control Authority, and the name and contact information for the facility manager, if different than the duly authorized representative of the industrial user;
4. A statement that the industrial wastewater discharge permit is nontransferable without prior notification to and approval by the Control Authority in accordance with FMC 20.30.430, and provisions for furnishing the new owner or operator with a copy of the existing industrial wastewater discharge permit;
5. A statement that the permittee facility is subject at reasonable times to inspections and gathering of samples by the Control Authority to determine whether an industrial user is complying with the requirements of this chapter and any industrial wastewater discharge permit or other control mechanism issued thereunder;
6. Effluent limits and best management practices based on applicable pretreatment standards and pretreatment requirements;
7. Self-monitoring, sampling, reporting, notification, and recordkeeping. These requirements shall, at a minimum include the pollutants to be monitored, sampling locations and sampling frequency, the sample type required to be monitored under this chapter, types of reports and when they are due, and the various notifications and when they are required;

8. A statement of applicable enforcement remedies for violating the conditions in the industrial wastewater discharge permit, including pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state, and local law;

9. Requirements to control slug discharges, including developing, updating, and implementing slug discharge control plans if determined by the Control Authority to be necessary; and

10. Reapplication requirements.

C. Industrial wastewater discharge permits may, as determined by the Control Authority, contain the following additional conditions:

1. Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

2. Requirements to install and maintain pretreatment facilities and technology, pollution control, including requirements to use best management practices to prevent accidental, unanticipated, or non-routine discharges, and construction of appropriate containment devices designed to reduce, eliminate, or prevent the introduction of pollutants into the POTW;

3. Requirements to develop and implement waste minimization plans to reduce the amount of pollutants discharged to the POTW;

4. Requirements to pay fees for administering the industrial wastewater discharge permit or industrial wastewater zero-discharge permit. The annual fee established pursuant to Section 12.08B.330 of the Tacoma Municipal Code, as now or may hereafter be amended, for administering industrial wastewater discharge permits and industrial wastewater zero-discharge permits is hereby adopted as the monthly fixed fee for industrial wastewater discharge permits and industrial wastewater zero-discharge permits;

5. Requirements to install and maintain inspection and sampling facilities and equipment, including flow measurement devices, and provide access to the Control Authority to conduct inspections and sampling at reasonable times;

6. A statement that compliance with the industrial wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, and local limits, including those which become effective during the term of the industrial wastewater discharge permit; and

7. Other conditions determined by the Control Authority to ensure compliance with this chapter, including regulations issued by the Control Authority pursuant to this chapter, and applicable requirements set forth in federal and state laws and regulations.

#### **20.30.420 Industrial wastewater discharge permit modification.**

A. The Control Authority may amend any industrial wastewater discharge permit for good cause, including, but not limited to the following reasons:

1. To incorporate any new or revised federal, state, or local pretreatment standards or requirements;

2. To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character after the industrial user's industrial wastewater discharge permit is issued;
3. To address a change in the municipal wastewater system or POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
4. To respond to information indicating that a permitted discharge poses a threat to the health and safety of the municipal wastewater system, or POTW, personnel and the public, and/or receiving waters;
5. In response to a violation(s) of any term or condition of an industrial wastewater discharge permit;
6. When an industrial user misrepresents or fails to fully disclose all relevant facts in the industrial wastewater discharge permit application, or in any report required under this chapter;
7. When there is a revision of, or a variance is granted from, categorical pretreatment standards pursuant to 40 CFR 403.13;
8. When there has been a change in the legal or trade name of the industrial user, the duly authorized representative of the industrial user, or the name of the facility manager, and the permittee has submitted a request for a modification of the permit;
9. To correct typographical or other errors in the industrial wastewater discharge permit; and
10. To reflect an approved transfer of the facility ownership or operation to a new owner or operator.

B. The industrial user shall file a written request for a modification of an industrial wastewater discharge permit whenever there has been a change in the legal name or trade name of the industrial user or a change in the name or mailing address of the duly authorized representative or the industrial user or facility manager. The request shall be submitted to the Control Authority as soon as practicable but no later than 60 days following implementation of the change. A permit will be non-transferable and subject to revocation if such request is not timely filed.

#### **20.30.430 Industrial wastewater discharge permit transfer.**

A. Industrial wastewater discharge permits may be transferred to a new owner or operator subject to approval by the Control Authority. A permittee and new owner or operator seeking such transfer shall submit a joint or concurrent written request(s) to the Control Authority at least thirty (30) days in advance of the scheduled transfer date requesting the Control Authority to approve the transfer and modify the industrial wastewater discharge permit as needed to reflect the new owner or operator. Failure to provide a request for transfer in accordance with this section shall operate to revoke any and all rights granted under the industrial wastewater discharge permit to discharge to the municipal wastewater system effective as of the date of the facility transfer to the new owner or operator. The joint or concurrent request(s) to the Control Authority under this section shall (each) include a written certification by a duly authorized representative of permittee and the new owner or operator which:

1. States that there is no immediate intent to change the facility's operations and processes;
2. Identifies the specific date on which the facility transfer will occur;
3. Identifies the legal name and trade name, if any, of the new owner and operator, and the address of its corporate offices;
4. Identifies the name and contact information of the duly authorized representative of the new industrial user, the mailing address at which such representative may receive notice(s) from the Control Authority, and the name and contact information for the facility manager, if different than the duly authorized representative of the industrial user; and
5. Acknowledges and agrees that:
  - a. The new owner or operator has a legal, valid and binding obligation to comply with all requirements of the transferred industrial wastewater discharge permit;
  - b. Such transfer is within the power and authority of the permittee and the new owner or operator without consent of any other party and has been authorized by all requisite corporate or partnership action on the part of the permittee and new owner or operator;
  - c. Neither the transfer nor the Control Authority's approval of the transfer shall relieve the permittee of any obligation or liability arising under the industrial wastewater discharge permit occurring prior to the transfer;
  - d. The Control Authority waives none of its rights with respect to the permittee's or the new owner's or operator's compliance with the terms and conditions of the permit;
  - e. The Control Authority grants its approval of the transfer in reliance upon the representations, documents, and information provided by the permittee and new owner or operator in connection with the request for transfer; and that the approval of the transfer shall not in any way be deemed a representation by the Control Authority that the permittee or new owner or operator are in full compliance with the terms and conditions of the industrial wastewater discharge permit; and
  - f. The facility is subject at reasonable times to inspections and gathering of samples by the Control Authority to determine whether an industrial user is complying with the requirements of this chapter and any industrial wastewater discharge permit or other control mechanism issued thereunder.

**20.30.440 Industrial wastewater discharge permit revocation.**

- A. The Control Authority may revoke an industrial wastewater discharge permit or other control mechanism for cause, which includes, but is not limited to:
1. Failure to notify the Control Authority of a new waste stream or any changes to wastewater loading and wastewater characteristics prior to discharging such waste stream;



2. Failure to notify the Control Authority of significant production changes, as required by FMC 20.30.640;
  3. Misrepresenting or failing to disclose all relevant facts in an industrial wastewater discharge permit application, report, or other submittal required under this chapter;
  4. Falsifying self-monitoring reports or certification statements;
  5. Tampering with monitoring equipment;
  6. Unreasonably refusing, or interfering with, entry by Control Authority authorized representatives seeking to conduct inspections and/or gather samples at the facility, as required by the industrial user's industrial wastewater discharge permit or other control mechanism, or FMC 20.30.900;
  7. Failure to meet effluent limitations or the conditions in the industrial wastewater discharge permit or other control mechanism;
  8. Failure to pay monetary penalties imposed by the Control Authority, or supplemental fees it assesses;
  9. Failure to meet compliance schedules imposed by the Control Authority in an industrial wastewater discharge permit or other control mechanism;
  10. Cessation of operations;
  11. Failure to obtain the Control Authority's approval under FMC 20.30.430 prior to transferring the facility to a new owner or operator;
  12. Failure to request a modification of an industrial wastewater discharge permit in accordance with FMC 20.30.420.B;
  13. Any violation of this chapter, including, a violation of any applicable pretreatment standard or requirement, or any term of an industrial wastewater discharge permit or control mechanism issued pursuant to this chapter;
  14. An error by the Control Authority in issuing an industrial wastewater discharge permit; and
  15. Discharging wastewater to the municipal wastewater system that does or is likely to:
    - a. Cause pass through or interference;
    - b. Cause the Control Authority to violate the terms of its NPDES Permit(s); or
    - c. Pose a health and safety threat to City or Control Authority personnel or the public.
- B. An existing un-expired industrial wastewater discharge permit is deemed revoked on the effective date of a new industrial wastewater discharge permit issued for the same industrial user.

**20.30.450 Industrial wastewater discharge permit reissuance.**

An industrial user with an industrial wastewater discharge permit due to expire shall apply for an industrial wastewater discharge permit reissuance by submitting a complete permit application, in accordance with FMC 20.30.410, at least one hundred eighty (180) days prior to expiration of

the industrial user's existing industrial wastewater discharge permit, unless the Control Authority approves a different submittal deadline.

**20.30.460 Industrial wastewater discharge permitting – Extra jurisdictional industrial users.**

A. The City may allow an industrial user located outside the City's jurisdictional boundary to discharge industrial wastewater into the municipal wastewater system and POTW if the City of Tacoma determines that the POTW has available capacity and treatment capability and that there is legal authority to regulate and control such discharges pursuant to a pretreatment interlocal agreement between the contributing jurisdiction where the industrial user is located and the City of Tacoma as owner and operator of the POTW. Such agreement shall affix responsibilities in an enforceable manner to assure that the City of Tacoma's Pretreatment Program is fully and equitably administered in all contributing jurisdictions and to ensure that the City of Tacoma has adequate legal authority to enforce pretreatment requirements.

**20.30.470 Public notice.**

A. Industrial users applying for an industrial wastewater discharge permit, or an industrial wastewater discharge permit reissuance or modification which allows a new or increased pollutant loading, shall publish notice for each application in a form provided and prescribed by the Control Authority, which shall conform to the requirements of WAC 173-216-090. Public notice requirements shall not apply to reissuance of industrial wastewater discharge permits if there are no increases in volume or changes in the characteristics of discharge from those previously authorized. Publication, at applicant's expense, shall be at least once each week, for two consecutive weeks, in a newspaper of general circulation in Pierce County.

B. Public comment on permit applications will be accepted for a 30-day period following the second publication. If the Control Authority determines that there is a significant public interest, then the Control Authority shall hold a public hearing after the 30-day comment period, at a time and place deemed appropriate by the Control Authority. The Control Authority may require the applicant to mail the notice to persons who have expressed an interest in being notified. The Control Authority may also require the applicant to post the notice of the public hearing on the applicant's facility.

## **REQUIREMENTS FOR FOOD SERVICE ESTABLISHMENTS, HAULED WASTE AND DENTAL FACILITIES**

### **20.30.500 Requirements for food service establishments.**

A. Best management practices for fats, oil and grease (FOG) for food service establishments. The BMPs set forth below establish requirements for owners and operators of any food service establishment that has the potential to discharge floatable or settleable material to the municipal wastewater system.

1. Unless otherwise approved by the Control Authority, food service establishments shall install, and properly operate and maintain, a grease removal device in compliance with the requirements as set forth in this chapter, the Uniform Plumbing Code and Chapter 5 of the Side Sewer and Sanitary Sewer Availability Manual, which chapter is incorporated by reference as though fully set forth herein.

2. Food service establishments shall not discharge or cause to be discharged to the municipal wastewater system any wastewater in violation of FMC 20.30.100.

3. If the Control Authority determines at any time that an existing grease removal device is incapable of adequately retaining the floatable and settleable material, or if it was installed in such a manner that it cannot be inspected or properly maintained, the food service establishment shall install a grease removal device that complies with this chapter, and the requirements of the Uniform Plumbing Code and Chapter 5 of the Side Sewer and Sanitary Sewer Availability Manual, within ninety (90) days after being notified by the Control Authority of such requirement unless an alternative schedule is approved by the Control Authority.

4. General control requirements. The following general requirements apply to all food service establishments that install, or are required to install, a grease removal device.

a. A grease removal device shall be required for the proper handling of liquid wastes which may be harmful to, or cause obstruction in, the POTW or cause or contribute to pass through or interference.

b. It shall be the responsibility of the food service establishment and owner of the property to obtain any necessary permits from the appropriate regulatory authority prior to installing a grease removal device or modifying a facility's plumbing system to accommodate the installation of a grease removal device. The timing of review and approval of any permits that may be required shall in no way relieve the food service establishment from the responsibility of producing a discharge that complies with the provisions of this chapter.

c. The grease removal device shall be designed, sized, installed, maintained, and operated to accomplish the intended purpose of intercepting pollutants from the food service establishment's wastewater and preventing the discharge of such pollutants to the municipal wastewater system, including pollutants that result in toxic, noxious, or malodorous conditions that create a public nuisance or unsafe working conditions, which endanger life or the environment.

d. Upon change of ownership or operator of any existing food service establishment required to have an approved grease removal device under this

section, the applicant for sanitary sewer service shall have the burden to demonstrate that a properly sized, maintained, and functioning grease removal device is installed.

e. All sinks connected to a grease removal device shall be equipped with a fixed or removable mesh or screen to catch garbage and food debris and prevent it from entering the grease removal device.

f. The industrial user and food service establishment shall ensure all grease removal devices are easily accessible for inspection, cleaning, and removal of FOG.

g. The food service establishment shall maintain grease removal devices at its expense to ensure the device operates as designed to remove accumulated FOG. All such maintenance shall meet the requirements under the uniform plumbing code as adopted, and amended, by the City.

h. Food service establishments required to use and maintain a grease removal device shall maintain a written record every time the device is pumped, cleaned, or repaired. This record shall include the date, the name of the company that pumped, cleaned or repaired the device, and the amount of waste that was removed. Such records shall be maintained for a period of three (3) years, unless a longer retention period is specified in writing by the Control Authority, and shall be made available to the Control Authority upon request. The removed contents from any GGI and other approved grease removal devices shall be handled by a person licensed to haul such waste and shall be disposed of in accordance with applicable federal and state regulations and local ordinances.

#### 5. Required maintenance.

a. All grease removal devices shall be regularly cleaned so that the devices operate as designed to intercept fats, oil, and grease from the food service establishment's wastewater and prevent the discharge of such materials into the municipal wastewater system. All grease removal devices shall be serviced in accordance with manufacturer instructions at a minimum of every ninety (90) days or more frequently if the combined thickness of the floating greases and settled solids is greater than 25% of the hydraulic working capacity of the grease removal device or if toxic, noxious, malodorous conditions create a public nuisance or endanger worker or public health. The Control Authority may require more frequent cleaning if the minimum cleaning period is inadequate to meet the purpose and intent of this chapter, or less frequent cleaning if the industrial user can demonstrate to the Control Authority's satisfaction that less frequent cleaning is sufficient.

b. Biological treatment or enzyme treatment shall not be a substitute for the servicing of a grease removal device. Use of enzymes or other chemical or biological treatment or product that emulsifies or acts to emulsify FOG is prohibited unless approved by the Control Authority.

c. The food service establishment shall document the volume removed and the disposal of each pump-out with a waste manifest or disposal receipt, which shall be maintained by the food service establishment on site for at least three (3) years.

The Control Authority may require food service establishments to submit that information electronically to the Control Authority.

6. Variance.

a. A variance from the requirements of this section may be granted by the Control Authority when the installation of the required size GGI may be impractical due to limited space or other factors. The food service establishment may request a variance by submitting a proposed alternative grease removal system for attaining FOG protection for the POTW. The food service establishment shall demonstrate through data and other reliable information that the proposed alternative system, its overall design, including size and location, will satisfy and result in compliance with the intent, and discharge requirements, of this chapter. The design plans must be signed and sealed by a Washington State licensed professional engineer with experience in interceptor design. If approved, the design professional must certify that the site plan and the alternative grease removal system design meets the intent, and discharge requirements, of this chapter. In no case shall a variance result in violation of any pretreatment standard or requirement specified in this chapter and applicable to the discharge, cause or contribute to, an obstruction, pass through, or interference with the POTW.

b. A variance may be revoked if the Control Authority determines, in its sole and reasonable discretion, that the food service establishment is in violation of the conditions set forth in the variance, the request for a variance was procured through fraud or materially false information, the reasons for granting the variance have materially changed, or the conditions set forth in the variance are inadequate to control specific pollutants as necessary to meet the purpose and intent of this chapter.

c. If a variance is granted, the food service establishment shall implement the approved alternative grease removal system and any BMPs and other mitigation measures that may be specified by the Control Authority. These BMPs may include, but are not limited to:

(1) Allowing the installation of a Hydromechanical Grease Interceptor (HMGI), or continuing to allow the use of a HMGI in lieu of installing a GGI, where the HMGI is shown to be effective. If a HMGI is not shown to be effective, the Control Authority may require the food service establishment to install a GGI;

(2) A requirement that all sinks and drains which are connected to the POTW be equipped with a fixed or removable mesh or screen which shall catch garbage and food debris and prevent it from entering the POTW;

(3) A requirement that biological treatment or enzyme treatment shall not be used unless approved by the Control Authority. Use of enzymes or other chemical or biological treatment or product that emulsifies or acts to emulsify FOG is prohibited;

(4) If requested by the Control Authority, an employee training program on FOG waste management instituted by the food service establishment on a periodic basis and for all new employees;

(5) A requirement that the food service establishment clean its private side sewer quarterly to prevent the buildup of FOG or as otherwise specified by the Control Authority; and

(6) A requirement that the food service establishment submit records of the private side sewer cleaning if requested by the Control Authority.

### **20.30.510 Requirements for hauled waste.**

The direct or indirect discharge of holding tank waste to the municipal wastewater system is prohibited.

### **20.30.520 Requirements for dental facilities.**

#### **A. Best Management Practices for Dental Facilities.**

1. Applicability. These BMPs apply to dental dischargers. Dental dischargers are not significant industrial users unless designated as such by the Control Authority. Dental dischargers are not categorical industrial users. These BMPs do not apply to dental dischargers that:

- a. Exclusively practice one or more of the following dental specialties: oral pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics, periodontics, or prosthodontics;
- b. Discharge wastewater from a mobile unit operated by a dental discharger;
- c. Do not discharge any amalgam process wastewater to the municipal wastewater system or POTW (e.g., a dental discharger that collects dental amalgam process wastewater for transfer to a centralized waste treatment facility as defined in 40 CFR Part 437); and
- d. Do not place or remove dental amalgam except in limited emergency or unplanned, unanticipated circumstances that are reported and certified to the Control Authority as required in 40 CFR Section 441.50.

#### **2. Reporting.**

- a. The duly authorized representative of a dental discharge facility shall submit a dental user survey and certification to the Control Authority on a form provided by the Control Authority.
- b. A new source dental discharger shall submit the dental user survey and certification within ninety (90) days of discharge to the sanitary sewer system.
- c. A dental discharger existing on the effective date of the ordinance adopting this chapter, shall submit the dental user survey and certification to the Control Authority by October 12, 2020.
- d. Exempt dental dischargers shall submit the dental user survey and certification by October 12, 2020, or within ninety (90) days of operation if a new facility.

#### **3. Amalgam Separator Requirements.**

- a. A new source dental discharger shall install, operate, and maintain an amalgam separator or device compliant with 40 CFR Section 441.30 prior to discharge to the POTW.



b. All dental facilities that discharge amalgam process wastewater to the POTW shall install an amalgam separator or device and implement the required best management practices in accordance with this section.

c. Existing source dental dischargers shall install, operate, and maintain an amalgam separator compliant with 40 CFR Section 441.30 by July 14, 2020. Existing facilities with non-compliant amalgam separators shall comply by June 14, 2027, unless replaced earlier due to malfunction.

#### 4. Amalgam Separator Required Best Management Practices.

a. All amalgam separators required under this chapter shall meet and comply with the following BMPs:

(1) The amalgam separator shall be compliant with 40 CFR Section 441.30(1) and certified to meet at least a 95% solids removal efficiency as specified by federal or state regulations per 40 CFR Section 441.30(1)(i);

(2) The amalgam separator shall allow the dental discharge facility to make direct observations as to the level of solids in the collection container, proper solid and liquid separation, and the condition of all plumbing connections;

(3) The amalgam separator shall be installed so that all amalgam contaminated wastewater passes through the unit before being discharged to the municipal wastewater system;

(4) The amalgam separator shall be installed so that it is accessible for cleaning and inspection;

(5) The amalgam separator shall be serviced at a minimum of once every twelve (12) months, in accordance with the manufacturer's instructions or more frequently if visual inspections indicate that the level of solids is at or over 85% of the recommended maximum level, whichever is more stringent; and

(6) Amalgam waste removed from the amalgam separator shall be collected and handled in accordance with the manufacturer's instructions and applicable federal and state regulations, and local ordinances.

b. Each dental discharge facility shall ensure dental amalgam wastestreams from chair side traps, screens, vacuum pump filters, dental tools, cuspidors, or collection devices discharge through an appropriate amalgam separator.

c. Each dental discharge facility shall operate and maintain all equipment in accordance with the manufacturer's instructions.

d. Each dental discharge facility shall use disinfecting line cleaners that are non-acidic and non-oxidizing with a pH between 6-8 Standard Units. Prohibited cleaning chemicals include but are not limited to: bleach; chorine; iodine; and peroxide chemicals and other oxidizing cleaners.

e. All water containing amalgam waste shall be plumbed through the amalgam separator. When cleaning, ensure all filters or traps are rinsed over sinks or drains that discharge to the amalgam separator.

f. The dental discharge facility shall not cause or contribute to pass through or interference, or violate FMC 20.30.100.

5. Record Keeping. All records required pursuant to this chapter shall be kept on site for a minimum of three (3) years, unless a longer retention period is specified in writing by the Control Authority, and shall be made available to the Control Authority as required by this chapter. Each dental discharge facility shall maintain records of:

a. Amalgam disposal: Records shall include the date, name and address of the facility where amalgam waste is shipped, and the amount shipped;

b. Visual inspections: Inspection logs shall include the date and time of the visual inspection, name and initials of person conducting the inspection, level of solids, maintenance needed, or other identified problems (e.g., leaks); and

c. Amalgam separator: Records shall include all maintenance and service completed on the amalgam separator.

6. Business Modifications. The owner and operator of a dental discharge facility shall inform the Control Authority in writing prior to:

a. Sale or transfer of ownership of the dental discharge facility;

b. Change in the trade name under which the dental discharge facility is operated;

c. Change in the nature of the services provided at the dental discharge facility that affects the potential to discharge amalgam; and

d. Remodel of the dental discharge facility that may result in an increase in flow or pollutant loading or that otherwise requires the owner or operator of the dental discharge facility to submit plans or specifications for approval through a building, land use, permitting or zoning department, or any other formal approval process by the City.

7. Inspections and Data Collection. The Control Authority may conduct inspections as authorized by this chapter, and/or require an additional or updated dental user survey for any dental discharge facility.

## REPORTING AND NOTIFICATION REQUIREMENTS

### **20.30.600 Baseline monitoring reports.**

A. Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing industrial users currently discharging to or scheduled to discharge to the municipal wastewater system shall submit a report which contains the information listed in subsection B below. At least ninety (90) days prior to commencement of their discharge, the owners, operators, permittees, and facility managers of new sources and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical pretreatment standard, shall submit to the Control Authority a report which contains the following:

1. The information listed in subsection B below;
2. The method of pretreatment intended to be used to meet applicable pretreatment standards; and
3. Estimates of anticipated flow and quantity of pollutants to be discharged from regulated process streams and other non-process streams.

B. Baseline monitoring reports shall include the following information:

1. All information listed in FMC 20.30.340.A.1 through FMC 20.30.340.A.11; and
2. Measurement of pollutants:
  - a. The industrial users shall take a minimum of one (1) representative sample to compile the data necessary to comply with the requirements of this paragraph;
  - b. Samples shall be taken immediately downstream from pretreatment facilities if such facilities exist or immediately downstream from the regulated processes if no pretreatment facilities exist. Industrial users shall measure the flows and concentrations necessary to allow use of the combined waste stream formula in 40 CFR Section 403.6(e) if other wastewaters are mixed with the regulated wastewater prior to pretreatment. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR Section 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority. Both daily maximum and average concentrations (where determined) shall be reported;
  - c. Sampling and analysis shall be performed in accordance with the sampling techniques described in this chapter and 40 CFR 136;
  - d. The Control Authority may allow the submission of a baseline monitoring report which uses historical data only, provided the data is sufficient to determine the need for industrial pretreatment measures;
  - e. The baseline report shall indicate the time, date, and place of sampling, and the methods of analysis. Industrial users shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the municipal wastewater system; and
  - f. All baseline monitoring reports shall be certified in accordance with FMC 20.30.350.

### **20.30.610 Compliance schedules.**

A. When a compliance schedule is granted by the Control Authority under FMC 20.30.410.B.8, or other provision of this chapter, the following conditions shall apply:

1. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable pretreatment standard. Such major events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operations;
2. No increment referred to in subsection A.1 above shall exceed nine (9) months. The date of final compliance shall not extend beyond the final compliance date established for the applicable pretreatment standard;
3. The industrial user shall submit a progress report to the Control Authority no later than fourteen (14) days following each date in the schedule and the final date for compliance with the schedule. The industrial user shall report, at a minimum, whether or not it timely complied with progress increments to be met on such date and, if not, the date on which it expects to comply with such progress increments, the reason for the delay, and the steps being taken by the industrial user to return to the established schedule; and
4. In no event shall more than nine (9) months elapse between submittal of progress reports to the Control Authority.

### **20.30.620 Reports on compliance with categorical pretreatment standard deadline.**

A. Existing sources and new sources subject to a categorical pretreatment deadline shall submit a report to the Control Authority stating whether compliance has been achieved by the deadline date. An existing source shall submit a report within ninety (90) days after the final compliance date established by an applicable pretreatment standard. A new source shall submit a report within ninety (90) days after first discharging wastewater to the municipal wastewater system.

B. Reports submitted by existing sources and new sources under this section shall contain the information described in FMC 20.30.340.A.1 through FMC 20.30.340.A.11, and indicate whether the applicable pretreatment standards are being met on a consistent basis. If the report indicates that the pretreatment standards are not being met on a consistent basis, the report shall state what additional operation and maintenance and/or pretreatment is necessary to bring the industrial user into compliance with the applicable pretreatment standards and requirements. Reports submitted under this section shall be certified in accordance with FMC 20.30.350.

### **20.30.630 Periodic self-monitoring reports.**

A. Any industrial user with an industrial wastewater discharge permit shall submit periodic self-monitoring reports to the Control Authority at dates specified in its industrial wastewater discharge permit. Such reports shall compile the results of all effluent sampling required by the industrial user's industrial wastewater discharge permit during the previous reporting period. At a minimum, such industrial users shall sample their discharge twice a year unless otherwise specified in the industrial wastewater discharge permit, or by the Control Authority.

B. The periodic compliance report shall include a record of the nature and concentrations (and mass if specified in the industrial user's industrial wastewater discharge permit) of the pollutants in the effluent, subject to a pretreatment standard, that were measured, including a record of measured or estimated average and maximum daily flows taken at the industrial user's designated sampling location. Flows shall be reported based on an actual measurement. If actual measurements are not feasible, the Control Authority may allow an industrial user to report average and maximum flows by other techniques that are acceptable to the Control Authority.

C. The periodic compliance report shall also include monitoring records and any sampling information required by the industrial user's industrial wastewater discharge permit, including information necessary to determine compliance with applicable best management practices, pollution prevention alternatives, maintenance, treatment, and record keeping requirements. Production data shall be reported if required by the industrial user's industrial wastewater discharge permit, or when an industrial user is subject to a unit production-based concentration limit established by an applicable categorical pretreatment standard. Sampling and analysis that is conducted by the industrial user at the designated sampling location more frequently than is required by this section shall be included in the report.

D. The Control Authority may require industrial users to report other sampling and analysis as needed to determine compliance with this chapter.

E. Industrial users shall certify all periodic self-monitoring reports in accordance with FMC 20.30.350.

### **20.30.640 Notification of change in discharge or operations.**

A. Permitted industrial users shall file a written notification with the Control Authority a minimum of thirty (30) days prior to any significant change either in the volume or character of pollutants in its discharge, or a change in any manufacturing process or pretreatment modifications that may alter the volume or character of pollutants in its wastewater discharge, including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification under 40 CFR 403.12(p). A significant change shall be a change equal to or greater than twenty percent (20%) in the mass of a pollutant or volume of flow discharged to the POTW. For purposes of this subsection, an industrial user becomes aware when it knows, or reasonably should have known, the facts giving rise to a reporting obligation.

B. Permitted industrial users with a permit condition that imposes wastewater concentration limits based on production levels shall notify the Control Authority in writing within two (2) days of when the industrial user becomes aware that production levels will significantly change during the next calendar month.

C. The Control Authority may require permitted industrial users to submit information needed to evaluate the changed discharge, including submission of a new or revised industrial wastewater discharge permit application. The Control Authority may issue, reissue, or modify an industrial user's industrial wastewater discharge permit in response to the notice under this section.

D. Permitted industrial users shall notify the Control Authority at least thirty (30) days prior to facility shutdown or closure which might alter the character, nature, quality, or volume of its wastewater.

#### **20.30.650 Notification and reports of potential problems.**

A. An industrial user causing a discharge to the POTW that has the potential to cause pass through or interference, including but not limited to, discharges of a non-routine and episodic nature, non-customary batch discharges, and slug loads, shall, upon first becoming aware of such discharge(s), immediately notify the Control Authority by telephone of the incident. This notification shall include the location of the discharge, type of waste discharged, concentration, and volume, if known, and any corrective actions taken by the industrial user. For purposes of this subsection, an industrial user becomes aware when it knows, or reasonably should have known, the facts giving rise to a notification obligation.

B. Within five (5) days following a discharge described above in subsection A, the industrial user shall submit a written report to the Control Authority describing the causes of the discharge and the actions taken by the industrial user to prevent a recurrence of the discharge. Such report shall also indicate whether the discharge caused violations of any pretreatment prohibition, pretreatment standard, pretreatment requirements, and permit-specific or local limits. Notifications and reports made and submitted under this section shall not relieve the industrial user of any expense, loss, or damage to persons or property, natural resource damages, or other liability, including the assessment of supplemental fees, nor shall such notification or reporting relieve the industrial user from any enforcement action authorized by this chapter.

C. Industrial users shall post a notice in a prominent place at their facility that makes employees aware of the notification obligation in this section. Such notice shall include the point of contact and telephone number to call at the POTW to report a discharge covered by this section.

D. Industrial users shall notify the Control Authority immediately of any changes at its facility affecting the potential for a slug discharge.

#### **20.30.660 Slug discharge - Notification and plan development.**

A. Each industrial user shall establish protective measures at their facility to avoid and prevent spills and slug discharges of pollutants and prohibited substances to the municipal wastewater system. BMPs to prevent the discharge of spill or slug discharges shall be implemented and maintained at the industrial user's expense.

B. Each industrial user shall report all spills to the Control Authority that occur within the boundaries of the industrial user's facility whether or not the spill results in a discharge to the municipal wastewater system.



C. The Control Authority may require any industrial user to prepare and implement a Slug Discharge Control Plan (SDCP). The Control Authority's acceptance of such plan shall not relieve an industrial user from the responsibility to modify its SDCP, as necessary, to meet the requirements of this chapter. SDCP's shall address, at a minimum, the following:

1. A description of all discharge practices, including non-routine discharge practices;
2. A description of all stored chemicals, disclosing all ingredients in formulations which could violate this chapter if discharged to the municipal wastewater system;
3. A description of potential discharge pathways to the municipal wastewater system;
4. The procedures for ensuring immediate notification to the Control Authority of any slug discharge; and
5. The procedures to prevent adverse impacts from any slug discharge. Such procedures shall address the inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building or use of existing containment structures or equipment, measures for containing pollutants, and measures and equipment for emergency response.

D. Industrial users shall immediately notify the Control Authority when a slug discharge to the municipal wastewater system occurs. This notification shall include the location of the discharge, date and time of the discharge, type of substances discharged, the concentration of contaminants, to the extent known, the volume of the discharge, and any corrective actions taken. In addition to enforcement under this chapter, industrial users responsible for a slug discharge shall be liable for all supplemental fees incurred by the Control Authority caused by and in response to such event.

E. Within five (5) days following a slug discharge, the industrial user shall submit a written report to the Control Authority describing the cause of the discharge, including any information that has become available to supplement the industrial user's initial notice. The written notice shall also include measures taken by the industrial user to prevent similar events in the future.

F. Industrial users shall review their SDCP's annually, or sooner if a change is made at an industrial user's facility that may require modifications to the SDCP. Modifications to the SDCP shall be submitted to the Control Authority for review and acceptance.

G. Industrial users subject to this section shall post signs in conspicuous locations on the industrial user's facility notifying employees about the procedures for reporting a slug discharge to the Control Authority.

#### **20.30.670 Reports for industrial users.**

If the Control Authority deems it reasonably necessary in order to assure compliance with provisions of this chapter, it may require any industrial user to submit an industrial wastewater discharge permit application, questionnaire, a report on BMP implementation, or other reports and notifications authorized by this chapter in a format and timeframe as specified by the Control Authority.

### **20.30.680 Notice of noncompliance.**

If sampling and analysis performed by, or on behalf of, an industrial user indicates a violation of this chapter has occurred or is occurring, the industrial user shall notify the Control Authority within twenty-four (24) hours of becoming aware of the violation. Unless otherwise directed by the Control Authority, the industrial user shall repeat the sampling and analysis within five (5) days and submit the results to the Control Authority no later than thirty (30) days after becoming aware of the violation. For purposes of this section, an industrial user becomes aware when it knows, or reasonably should have known, the facts giving rise to a notification obligation.

### **20.30.690 Notification of the discharge of hazardous waste.**

A. Any industrial user shall notify the Control Authority, in writing, of any discharge into the municipal wastewater system of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261 or a dangerous waste under Chapter 173-303 WAC. Such notification shall be made within the appropriate time frames specified in FMC 20.30.650 or within twenty-four (24) hours of becoming aware of the discharge, whichever is shorter. Such notification shall include:

1. The name of the hazardous waste as set forth at 40 CFR Part 261 or the name of the dangerous waste in Chapter 173-303 WAC;
2. The EPA hazardous waste number;
3. The type of discharge (continuous, batch, or other);
4. An identification of the hazardous constituents contained in the wastes;
5. An estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month;
6. An estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months;
7. A statement that the industrial user has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical; and
8. Certification as required by FMC 20.30.350.

B. Any industrial user shall additionally notify the EPA Regional Waste Management Division Manager and the Washington State Department of Ecology, Hazardous Waste & Toxics Reduction program, in writing, of any discharge into the municipal wastewater system of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261 or a dangerous waste under Chapter 173-303 WAC and meets the reporting criteria specified at 40 CFR Section 403.12(p). Notification to the State and EPA is the responsibility of the industrial user and shall be made as required under 40 CFR Section 403.12(p). The industrial user shall provide the Control Authority with copies of all notifications made to the Washington State Department of Ecology and EPA.

C. In the case of any new regulation under Section 3001 of the Resource Conservation and Recovery Act (RCRA) identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the industrial user shall notify the Control Authority, the EPA Regional Waste Management Waste Division Director and the Washington

State Department of Ecology, Hazardous Waste & Toxics Reduction program of the discharge of such substance within ninety (90) days of the effective date of such regulations.

D. The requirements of this section do not create a right or privilege to discharge any substance not otherwise allowed to be discharged by this chapter, a permit issued hereunder, or any applicable federal or state regulation.

**20.30.700 Requests for information.**

A. Permittees and other persons subject to regulation under this chapter shall timely submit the following to the Control Authority upon request:

1. Information requested by the Control Authority to determine whether an industrial wastewater discharge permit or other control mechanism should be issued, modified, revoked, reissued, or terminated, or to determine compliance with such permit, control mechanism, or this chapter; and
2. Copies of any records that are required by its industrial wastewater discharge permit, or other control mechanism, including but not limited to, information regarding industrial processes, the nature and characteristics of wastes and wastewaters generated at the industrial facility, and the method of disposal of wastes.

B. Failure to provide information within the timeframe specified by the Control Authority shall be a violation of this chapter.

## COMPLIANCE MONITORING AND RECORD KEEPING

### **20.30.800 Analytical and sampling requirements.**

All pollutant sampling and analysis required by this chapter shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for a pollutant subject to sampling under this chapter, sampling and analysis shall be performed in accordance with procedures approved by the Control Authority. Unless specified below or otherwise specified by the Control Authority, data submitted to the Control Authority shall be analyzed by a laboratory registered or accredited under the provisions of Chapter 173-50 WAC. This requirement shall not apply to the following data submitted to the Control Authority: flow; temperature; settleable solids; conductivity; pH; turbidity; and internal process control parameters used solely for internal process control.

### **20.30.810 Specific sampling requirements for industrial users.**

A. Industrial users shall certify that all samples required to be collected under this chapter are representative of normal work cycles and the expected pollutant discharges from the industrial user's facility occurring during the reporting period. Industrial users shall also ensure that samples are collected during the period(s) specified in their industrial wastewater discharge permit, or as otherwise required by the Control Authority. In addition, industrial users shall comply with the following sampling protocols:

1. Use proper sample containers appropriate for sample analysis and sample collection and preservation as specified by the protocols in 40 CFR Part 136;
2. Obtain samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds using grab sample techniques;
3. For certain pollutants identified in an industrial user's industrial wastewater discharge permit, an industrial user may composite multiple grab samples taken over a twenty-four (24) hour period, unless a different time period is specified by the Control Authority. Industrial users may composite grab samples for cyanide, total phenols, and sulfides either in the laboratory or in the field, and may composite grab samples for volatile organics and oil and grease in the laboratory prior to analysis;
4. For all other pollutants, industrial users shall employ twenty-four (24) hour flow-proportional composite samplers unless the Control Authority authorizes or requires an alternative sample collection method. Time-proportional sampling may be approved or used by the Control Authority where time-proportional samples are believed representative of the discharge;
5. The Control Authority may authorize composite samples for parameters unaffected by the compositing procedures, as appropriate;
6. The Control Authority may require grab samples either in lieu of or in addition to composite sampling to show compliance with instantaneous discharge limits;
7. Industrial users conducting sampling activities to complete baseline monitoring and ninety (90) day compliance reports required by FMC 20.30.600 and FMC 20.30.620 shall collect at least four (4) grab samples for pH, cyanide, total phenols, oil and

grease, sulfide and volatile organic compounds. Industrial users may composite samples prior to analysis if allowed under subsection A.3 above. When historical sampling data exists, the Control Authority may authorize fewer samples if it determines that use of such samples will satisfy the requirements of this section;

8. For industrial users conducting sampling to complete periodic self-monitoring reports under FMC 20.30.630, the Control Authority may specify the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements; and

9. Industrial users shall properly operate, clean, and maintain sampling and flow metering facilities and devices and ensure they function properly.

### **20.30.820 Monitoring – Recordkeeping.**

In addition to any recordkeeping requirements set forth in an industrial user's industrial wastewater discharge permit or other control mechanism, all industrial users subject to the reporting requirements of this chapter shall retain and make available for inspection and copying by the Control Authority at its facility all records the industrial user generates when conducting monitoring activities required by this chapter. Such industrial users shall also retain records associated with best management practices when such practices are required by the Control Authority. Monitoring records shall include chain-of-custody information including, at a minimum, the date, time, place, and method of sampling, and the name of the person(s) conducting the sampling; the quality control and quality assurance procedures used and the name of the person(s) with control of the sample prior to analysis; the place and date where the sampling analysis was completed, the analytical technique(s) used, and the name of the person conducting the analysis; and the results of the sampling analysis. Industrial users shall retain the records described in this section at its permitted facility for inspection and copying by the Control Authority for three (3) years, unless a longer retention period is specified in writing by the Control Authority. The industrial user's obligation to maintain records under this section shall be automatically extended for the duration of any administrative enforcement or litigation action brought by the Control Authority against the industrial user.

## **RIGHT OF ENTRY AND CONFIDENTIALITY**

### **20.30.900 Right of entry - Inspection and sampling.**

A. Authorized representatives of the Control Authority bearing proper credentials and identification shall have the right to enter the facility of any industrial user at reasonable times to conduct inspections and gather samples to determine whether an industrial user is complying with the requirements of this chapter and any industrial wastewater discharge permit or other control mechanism issued thereunder. Reasonable times shall include normal business hours, hours during which production, treatment, or discharge occurs, or times when the Control Authority has reasonable cause to believe that a violation has occurred or is occurring requiring immediate inspection.

B. Access shall include all parts of the facility for the purpose of inspection, and may include, but not be limited to surveillance, sampling discharges or materials likely to be discharged, examination and copying of records related to compliance with this chapter, evaluating pretreatment facilities, and the performance of additional duties relating to the compliance inspection.

C. Where an industrial user has security measures in force which require proper identification and clearance before entry into the facility, the industrial user shall make necessary arrangements with its security personnel so that Control Authority representatives bearing proper credentials and identification will be permitted to enter without delay for the purpose of conducting compliance inspection duties.

D. The Control Authority may require installation of devices necessary to sample and monitor industrial wastewater discharges as required by this chapter. The Control Authority may, with the industrial user's consent, temporarily install devices to sample and monitor discharges on an industrial user's premises when existing sampling and monitoring devices are inadequate to determine whether an industrial user's discharge is complying with the requirements of this chapter.

E. The Control Authority shall have access to and use of all monitoring facilities within an industrial user's facility to evaluate the industrial user's compliance with this chapter.

F. Industrial users shall maintain unobstructed, safe, and convenient access to the areas of the facility to be inspected or sampled. Upon request by the Control Authority, an industrial user shall remove, at its own expense, any obstructions that prevent the Control Authority from undertaking its inspection or sampling activity.

G. Any unreasonable interference with the Control Authority's access under this section shall be a violation of this chapter, and may result in revocation of an industrial wastewater discharge permit, suspension or termination of authorization to discharge nondomestic wastewater to the municipal wastewater system, or other enforcement authorized by this chapter.

### **20.30.910 Public disclosure and confidentiality.**

Information submitted to and maintained by the Control Authority pursuant to this chapter is subject to public disclosure pursuant to the provisions of Chapter 42.56 RCW. Financial, commercial, and proprietary information submitted by an industrial user which it identifies as confidential may be exempt from public disclosure pursuant to the provisions of Chapter 42.56 RCW.



## **PUBLICATION OF INDUSTRIAL USERS IN SIGNIFICANT NONCOMPLIANCE**

### **20.30.1000 Publication of industrial users in significant noncompliance.**

A. The Control Authority shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdiction served by the POTW, a list of the industrial users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and met any of the criteria below:

1. Chronic violations of wastewater discharge limits in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter during a six (6) month period exceed by any magnitude a numeric pretreatment standard or requirement, including instantaneous limits;
2. Technical review criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all the measurements taken for the same pollutant parameter during a six (6) month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits multiplied by the applicable TRC, which is 1.4 for BOD, TSS, fats, oils, and grease, and 1.2 for all other pollutants except pH;
3. Any other violation(s) of a pretreatment standard or requirement, including daily maximum, long-term average, instantaneous limit or narrative standard that the Control Authority determines to have caused, alone or in combination with other discharges, pass through or interference, including endangering the health of the general public or the health of City or Control Authority personnel;
4. Any discharge of a pollutant that has caused imminent endangerment to human health, welfare, or to the environment or has resulted in the Control Authority exercising its emergency authority to halt or prevent such discharge;
5. Failure to meet a compliance schedule milestone contained in an industrial wastewater discharge permit or compliance order for starting construction, completing construction, or attaining final compliance within ninety (90) days after the milestone schedule date;
6. Failure to provide, within forty-five (45) days after the due date, any required report, including a baseline monitoring report, 90-Day compliance report, periodic self-monitoring reports, and reports on compliance with compliance schedules;
7. Failure to accurately report non-compliance; or
8. Any other violation or group of violations, which may include a violation of best management practices, which the Control Authority determines will adversely affect the operation or implementation of the local pretreatment program.

## **AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS**

### **20.30.1100 Upsets.**

A. An upset shall constitute an affirmative defense to an enforcement action brought for noncompliance with categorical pretreatment standards if the requirements of subsection B below are met.

B. An industrial user who wishes to establish the affirmative defense of an upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant and reliable evidence that:

1. An upset occurred and the industrial user can identify the cause(s) of the upset;
2. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures;
3. The industrial user has submitted the following information to the Control Authority within twenty-four (24) hours of becoming aware of the upset; for purposes of this subsection, an industrial user becomes aware when it knows, or reasonably should have known, the facts giving rise to a reporting obligation:
  - a. A description of the indirect discharge and cause of noncompliance;
  - b. The period of noncompliance, including exact dates and times or, if not corrected at the time information is submitted under this subsection, the anticipated time the noncompliance is expected to continue, and why;
  - c. The steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. If the upset was caused by a reduction, loss, or failure of the power supply to the treatment facility, an industrial user shall take steps to control production of all wastestreams to the extent necessary until the treatment facility is restored or an alternative method of treatment is provided, or until such wastestreams can be temporarily stored for future treatment, or taken off-site for treatment and disposal; and
  - d. If an industrial user provides the information required by this subsection orally within twenty-four (24) hours, the industrial user shall also provide the same information to the Control Authority in writing within five (5) days thereafter.

C. In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have the burden of proof.

### **20.30.1110 Bypass.**

A. Causing a bypass by intentionally diverting waste streams from any portion of a treatment facility is a violation of this chapter unless such bypass is specifically authorized by this section and the industrial user responsible for the bypass complies with all applicable requirements in this section.

B. If approved by the Control Authority, an industrial user may allow a bypass to occur if it does not cause a violation of a pretreatment standard or requirement, or local limit, but only if the bypass is for essential maintenance to assure efficient operation. Bypasses under this

subsection B are not subject to subsections C or D below, provided the bypass is compliant with this subsection.

C. Any other bypass, whether planned or unanticipated, shall meet the following requirements as applicable:

1. Industrial users knowing in advance of the need for a bypass shall submit written notice to the Control Authority, at least ten (10) days before the date of the bypass for approval by the Control Authority, if possible. Such notice shall include a description of the planned bypass (expected volume, pollutants, etc.), its expected duration, and the reason for such bypass. The Control Authority may approve such bypass, after considering its adverse effects, if it determines that the bypass will meet all conditions set forth in subsection D below.

2. Industrial users shall notify the Control Authority of any unanticipated bypass that exceeds an applicable pretreatment standard or requirement, or a local limit, within twenty-four (24) hours of becoming aware of such bypass. For purposes of this subsection, an industrial user becomes aware when it knows, or reasonably should have known, of the facts giving rise to a notification obligation. Industrial users shall provide a written follow-up report within five (5) days of such bypass, unless waived by the Control Authority based on its determination that the industrial user's oral report was timely and complete. Unless waived by the Control Authority, written bypass reports shall contain the following information:

- a. A description of the bypass (volume, pollutants, etc.) and its cause;
- b. The date(s) and time(s) when the bypass started and ended;
- c. If the bypass has not been corrected, the anticipated time it is expected to continue; and
- d. The steps the industrial user has taken or planned to reduce, eliminate, and prevent recurrence of the bypass.

D. The Control Authority may initiate an enforcement action authorized under this chapter against an industrial user for any bypass that violates this section; provided that, it shall be an affirmative defense to such an enforcement action if the industrial user can demonstrate that:

1. The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance, and the industrial user submitted notices as required under subsection C above.

E. In any enforcement proceeding, the industrial user seeking to establish an affirmative defense shall have the burden of proof.

F. The Control Authority may approve an anticipated bypass, after considering its adverse effects, if the Control Authority determines that it will meet the requirements of this section.

## **ENFORCEMENT AND REMEDIES**

### **20.30.1200 Violations, enforcement, and penalties.**

A. The provisions of this chapter together with any standards, requirements, and procedures promulgated under authority of this chapter or otherwise made subject to enforcement under this chapter, and all terms and conditions of any permit, control mechanism, directive, or compliance order issued under authority of this chapter, are subject to enforcement pursuant to and under authority of this chapter. The Control Authority is authorized to exercise all powers and authority granted pursuant to this chapter, including by way of example and not limitation, the power to issue compliance orders, corrective action notices, and notices of violation, assess monetary penalties, approve voluntary correction agreements, and develop, promulgate, revise, and implement policies and procedures governing enforcement actions under this chapter. The City Manager is further empowered to delegate enforcement authority under this chapter to such persons as may be determined by the City Manager Any such power and authority authorized pursuant to this chapter is in addition to the power and authority granted pursuant to the Fircrest municipal code and any other applicable state or federal law or regulation.

B. Except as otherwise provided herein, the maximum monetary penalty that may be assessed for each violation per day or portion thereof, and each continuing day or portion thereof, shall not exceed \$10,000. Monetary penalties shall be assessed in accordance with the most recent version of the Environmental Services Enforcement Response Plan.

C. Compliance with the requirements of this chapter is mandatory except as may be otherwise provided in this chapter. Except as otherwise provided herein, any act or omission by a responsible person in noncompliance with any duty, requirement, or obligation set forth in this chapter, set forth in any standard, requirement, or procedure promulgated under authority of this chapter or otherwise made subject to enforcement under this chapter, or set forth in a term or condition of any permit, authorization, control mechanism, directive, or compliance order issued under authority of this chapter, shall constitute a violation of this chapter and is subject to enforcement by the Control Authority.

D. Violations of this chapter may include, by way of example, but are not limited to the following acts or omissions:

1. Failure to accurately report the wastewater constituents and characteristics of a discharge;
2. Failure to submit any report or notices required by this chapter;
3. Failure to report known or reasonably anticipated changes in wastewater constituents or characteristics, including increased flows, prior to the changed discharge;
4. Misrepresenting or intentionally failing to disclose all relevant facts in an industrial wastewater discharge permit application, report, or other submittal required under this chapter;
5. Falsifying self-monitoring reports;
6. Tampering with monitoring equipment;

7. Unreasonably withholding consent for access by authorized Control Authority representatives to conduct a compliance inspection and other activities described in this chapter;
8. Violating any applicable pretreatment standard, pretreatment requirement, or local limit; and
9. Violating any provision of this chapter, including the terms of a permit, order, authorization or other control mechanism issued under the authority of this chapter.

E. Policies and procedures governing enforcement of violations of this chapter and assessment of monetary penalties are set forth in the Enforcement Response Plan, a copy of which shall be on file with the City and made available to the public.

F. Any responsible person who willfully violates any provision of this chapter, or any permit, order, control mechanism, or other written authorization or directive issued by the Control Authority thereunder shall, upon conviction, be guilty of a gross misdemeanor punishable by a fine of not more than \$10,000, or by imprisonment in jail for up to three hundred sixty-five (365) days, or both. Each day upon which a willful violation of this chapter, or any permit, order, control mechanism or other written authorization or directive issued by the City thereunder occurs may be deemed a separate and additional violation.

G. Any person who knowingly and falsely makes, completes, or alters a written instrument required to be submitted to the Control Authority pursuant to this chapter, or requirement or procedure promulgated under this chapter, or a term or condition of any permit, control mechanism, directive, or compliance order issued under authority of this chapter, shall be guilty of a gross misdemeanor and subject to a fine of not more than \$5,000 or by imprisonment in jail for up to three hundred sixty-five (365) days, or both. Proof of intent to defraud or injure is not required.

H. Persons, whether inside or outside the City, that discharge substances in violation of this chapter to the municipal wastewater system, including but not limited to persons that cause pass through or interference, shall be liable to pay any supplemental fees the Control Authority incurs to respond to such violation in accordance with the liability for supplemental fees section set forth in subsection M below and FMC 20.30.1250.

I. Joint and Several Responsibility and Liability. Responsibility for violations subject to enforcement under this chapter is joint and several, and the City is not prohibited from taking action against a person where other persons may also be potentially responsible persons, nor is the City required to take action against all potentially responsible persons.

J. Presumption. Except as may be otherwise provided by law, proof that a violation exists or existed on privately owned (non-governmental) property shall constitute prima facie evidence that each owner of the property is a responsible person. However, this presumption shall not relieve or prevent enforcement against any other person who may also be a responsible person.

K. Prohibited Acts Include Causing and Permitting. Whenever any act or omission constitutes a violation, such act or omission includes causing, allowing, permitting, aiding, abetting, suffering, or concealing the fact of such act or omission.

L. Separate and Continuing Offense. Every act or omission which constitutes a violation shall constitute a separate violation for each and every day during any portion of which the act or



omission constituting the violation is committed, continued, allowed, abetted, suffered, or permitted. A violation continues to exist until abated, corrected, or remedied.

M. Liability for supplemental fees. Persons, whether inside or outside the City, that discharge substances in violation of this chapter to the POTW including, but not limited to persons that cause pass through or interference, shall be liable to pay any supplemental fees the control authority incurs to respond to such violation. Liability for supplemental fees under this section shall also apply to any person responsible for discharging a substance in violation of this chapter to the POTW, regardless whether they own the property from which the prohibited discharge originates. Assessment of supplemental fees shall be in addition to:

1. Any enforcement action to address a violation of this chapter;
2. Any cost recovery remedy available to the Control Authority under state and federal environmental laws and regulations; and
3. Any other remedy available at law or in equity to address a violation of this chapter.

Any supplemental fees assessed shall become due and payable to the Control Authority within 30 days of receipt of such assessment. If supplemental fees are appealed and affirmed in whole or in part, such fees shall become due and payable within 30 calendar days of receipt of a final decision by the Hearing Examiner or a court. The control authority may pursue collection of non-payment of supplemental fees by any lawful means authorized, including referral to a collection agency.

#### **20.30.1210 Methods of service.**

A. Methods of Service. For purposes of this chapter, the methods of service of any documents related to enforcement, such as notices of civil violation and compliance orders (hereinafter “document”) shall be by mailing, personal service, posting, or publication.

B. When First-Class Mail Deemed Service. Any correction notice, notice of civil violation, notice of hearing, compliance order, or other code enforcement document shall be deemed legally served upon a party by mailing, unless another method of service is expressly required in a particular subsection of this chapter, state law, or court rule.

#### **20.30.1220 Civil violations.**

A. Civil Violation. The Control Authority may issue a notice of civil violation when there is reasonable cause to believe that there is or has been a violation.

B. Content of Notice of Civil Violation. The notice of civil violation shall set forth and contain:

1. The name and last known address of the responsible person;
2. The name and business address and telephone number of the Control Authority issuing the notice of civil violation;

3. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;
4. A description of the nature, extent, and time of the violation and a reference to the regulation that has been violated;
5. If a monetary penalty is imposed, a statement setting forth the monetary penalty(ies) imposed and each violation or violations that are subject to such monetary penalty(ies);
6. If the notice of civil violation is issued in conjunction or combined with a compliance order, and the violation is continuing in nature and will accrue daily monetary penalties until the violation is corrected, a statement (a) setting forth the amount of the daily monetary penalty for each such continuing violation, (b) that the violation is continuing in nature, and (c) that daily monetary penalties will accrue until the violation is corrected as set forth in the compliance order;
7. If the notice of civil violation is combined with a compliance order, the notice of violation shall include the content required pursuant to FMC 20.30.1240.B for issuance of a compliance order;
8. A statement that the person to whom the notice of civil violation is issued may appeal the notice of civil violation as provided in this chapter;
9. A statement that a notice of civil violation issued pursuant to this section represents a determination that the violation/violations identified in the notice has/have been committed and that this determination is final and conclusive unless appealed as provided in this chapter; and
10. Any additional information that may be required under the regulation that is alleged to have been violated.

C. Service. Except as provided herein, service of a notice of civil violation shall be by mailing or by personal service. If an address for mailed service cannot be ascertained and if personal service is not accomplished after reasonable effort, service shall be accomplished by posting a copy of the order conspicuously on the affected building, structure, premises, or land. If service by posting is ineffective or cannot be lawfully accomplished, service shall be accomplished by publication.

D. Effect of Notice of Civil Violation. A notice of civil violation issued pursuant to this section represents a determination that the violation/violations identified in the notice of civil violation has/have been committed. This determination is final and conclusive as to the violation or violations set forth in the notice of violation, unless a timely appeal is filed as provided in this chapter. Nothing herein is intended to preclude timely appeal of a separate or subsequent compliance order, notice of civil violation, notice of infraction, or imposition of criminal penalties related to the same or continuing violation or violations, to the extent an appeal may be available.

E. Continued Duty to Correct. Payment of a monetary penalty imposed pursuant to this chapter does not relieve a person of the duty to correct the violation as ordered by the Control Authority.

F. Monetary Penalty. Unless a different monetary penalty is specified in this chapter, the maximum monetary penalty for each violation per day or portion thereof, and each continuing day or portion thereof, shall be an amount up to \$10,000 per day.

G. Other Action. In addition to the issuance of the notice of civil violation, the City may take other enforcement action available at law or in equity, including, by way of example and not limitation, issuance of a notice of civil infraction, seeking injunctive or declaratory relief, seeking an order of abatement, taking action to seek imposition of criminal penalties, and where applicable, rescission as set forth in RCW 90.58.140. The City may also issue a notice of civil violation in conjunction with a compliance order.

H. Collection of Monetary Penalty. The monetary penalty constitutes a personal obligation of the person to whom the notice of civil violation is directed. Any monetary penalty assessed shall be immediately due and payable and must be paid to the City within ten calendar days from the date the notice of civil violation becomes final and non-appealable. Any monetary penalties that accrue for ongoing violations after the date the notice of civil violation becomes final and non-appealable must be paid within ten calendar days from the date the penalty(ies) have accrued. The City Attorney is authorized to take appropriate action to collect the monetary penalty when past due and owing.

I. Application for Remission or Mitigation. When remission or mitigation of the monetary penalty is authorized under the state or federal law, any person incurring a monetary penalty for a civil violation may, within ten days of service of the notice of violation, apply in writing to the Control Authority for remission or mitigation of the monetary penalty. The Control Authority shall issue a decision on the application within 15 business days following receipt of such application. Upon timely receipt of a complete application for remission or mitigation, the responsible public official, or designee, shall consider the application, together with any information the responsible public official, or designee, determines is relevant, and may remit or mitigate the penalty only upon a finding by a preponderance of the evidence that applicant has demonstrated extraordinary circumstances, such as the presence of information or factors not considered in setting the original monetary penalty. When a monetary penalty is imposed jointly by the Department of Ecology and the City, the penalty may be remitted or mitigated only upon such terms as both the Department of Ecology and the City agree.

J. Appeal. A notice of civil violation may be appealed to the Hearing Examiner pursuant to the procedures set forth in this chapter for appeal of a notice of civil violation. In the event that a notice of civil violation is combined with a compliance order, the compliance order is subject to appeal pursuant to FMC 20.30.1230.L and may be subject to expedited informal review pursuant to FMC 20.30.1240. Accrual and payment of the monetary penalty imposed shall be stayed during the pendency of any administrative appeal of the violation for which such monetary penalties have been imposed.

### **20.30.1230 Compliance orders.**

A. General. The Control Authority may issue a compliance order when there is reasonable cause to believe that there is or has been a violation or that failure to take action or to refrain from taking action will result in a violation. The compliance order is remedial in nature and intended to prevent future violations, protect persons and property from injury or the imminent threat of injury, terminate ongoing violations, and bring the activities, omissions, use, property, and structures that are the subject of the order into compliance, as nearly as practicable, within applicable standards and requirements of the applicable regulation(s).

B. Content of Compliance Order. The order shall set forth and contain:

1. The name and last known address of the responsible person(s);
2. The name and business address and telephone number of the Control Authority issuing the compliance order;
3. The street address or a description sufficient for identification of the building, structure, premises, or land upon or within which the violation will occur, has occurred, or is occurring;
4. A description of the nature, extent, and time of the violation and a reference to the regulation that has been or may be violated;
5. An order that the act or omission or use causing or leading to a violation or a potential violation shall immediately cease and desist, and/or, in appropriate cases, an order to take specific corrective action in compliance with the FMC immediately or within a specific and reasonable time, which corrective action may include, but is not limited to, abatement, remediation, correction, and/or mitigation of the site and other property damaged;
6. A statement that any act or omission contrary to a provision of the compliance order constitutes a civil violation and is subject to enforcement under this chapter;
7. A statement that the person to whom the compliance order is issued may appeal the compliance order as provided in this chapter;
8. If a stop-work or stop-use order is issued, a statement that the person to whom the compliance order is issued may, in addition to the right to appeal the order, seek expedited informal review as provided in this chapter. The statement shall identify the public official vested with authority to review the stop-work or stop-use order and the phone number, name, and title of the person authorized to initiate the process for informal expedited review;
9. A statement that the compliance order is final and conclusive unless appealed;
10. If the compliance order is combined with a notice of civil violation, the compliance order shall include the content required pursuant to FMC 20.30.1220.B for issuance of a notice of violation; and
11. Any additional information that may be required to be included in the compliance order under the regulation that is alleged to have been violated.

C. Service. Except as provided herein, service of a compliance order shall be by mailing or by personal service. If an address for mailed service cannot be ascertained and if personal service is not accomplished after reasonable efforts, service shall be accomplished by posting a copy of the order conspicuously on the affected building, structure, premises, or land. If service by posting is ineffective or cannot be lawfully accomplished, service shall be accomplished by publication.

D. Effective Date. A compliance order issued under this section shall become effective immediately upon service of the order upon the person to whom it is directed.

E. Effect of Compliance Order. A compliance order represents notice to the responsible person of a determination that the violation/violations identified in the compliance order has/have been committed, or that there is reasonable cause to believe that a violation will occur, and represents a determination that corrective action as described in the compliance order, or cessation of certain action identified in the order, is required to abate, correct, mitigate, remedy, or prevent the violation. These determinations are final and conclusive unless appealed as provided in this chapter; provided that, nothing herein is intended to preclude timely appeal of a separate or subsequent order, notice of civil violation, notice of infraction, or imposition of criminal penalties related to the same or continuing violation or violations, to the extent an appeal may be available.

F. Extension. Upon written request received prior to the expiration of the correction date or time, the Control Authority may extend the date set for correction for good cause or in order to accommodate a voluntary correction agreement. The Control Authority may consider substantial completion of the necessary correction or unforeseeable circumstances which render completion impossible or impracticable by the completion date established as a good cause.

G. Stop-work order; Stop-use order. Whenever the Control Authority finds reasonable cause to believe that a violation would, if the violation continued, (1) result in irreparable harm, (2) exacerbate injury already caused to any person or property, (3) result in damage or injury to wetlands or critical areas, (4) materially impair the code enforcement officer's ability to secure compliance, (5) materially impair the responsible persons' ability to correct the violation, or (6) cause or contribute to an emergency, the Control Authority may issue a stop-work or stop-use order, or issue a compliance order that includes a stop-work or stop-use order. The stop-work and stop-use order shall be deemed served and effective upon posting of the order; provided that, nothing herein shall preclude service in person, by mail, or by publication.

H. Violation – Unlawful. When a compliance order has been issued, posted, and/or served pursuant to this section, it is unlawful for any person to whom the order is directed or any person with actual or constructive knowledge of the order to conduct any activity or perform any work prohibited by the terms of the order, even if the order has been appealed, until the enforcement officer has removed the copy of the order, if posted, and issued written authorization for the activity or work to be resumed.

I. Removal of Compliance Order – Violation. It shall be unlawful to remove a compliance order posted in conformity with the requirements of this chapter without the prior authorization of a Control Authority, responsible public official of the City, the City Hearing

Examiner, or an order of a court with jurisdiction. A violation of the provisions of this subsection shall constitute a misdemeanor.

J. Compliance – Violation. It is unlawful to fail to comply with the terms and conditions of the compliance order. Failure to comply with a compliance order can result in enforcement actions, including, but not limited to, the issuance of a notice of civil violation, issuance of a civil infraction, and imposition of criminal penalties.

K. Other Action. In addition to the issuance of the compliance order, the City may take other enforcement action available at law or in equity including, by way of example and not limitation, issuance of a notice of civil violation and penalties, issuance of a civil infraction, seeking injunctive or declaratory relief, imposition of criminal penalties, modification or revocation of the project permit or approval, seeking an order of abatement, and rescission as set forth in RCW 90.58.140. The City may also issue a notice of civil violation concurrent with a compliance order.

L. Appeal; Exhaustion. A compliance order may be appealed to the Hearing Examiner pursuant to the procedures set forth this chapter for appeal of a compliance order. In the event that the FMC provides that the applicant may request administrative review, remission, or mitigation of the compliance order by a public official, applicant shall exhaust such administrative remedies prior to filing an appeal to the Hearing Examiner; provided that, expedited informal review pursuant to FMC 20.30.1240 is not considered an administrative remedy for purposes of this exhaustion requirement. In the event that a notice of civil violation is combined with the compliance order, payment of the monetary penalty imposed shall be stayed during the pendency of any administrative appeal. In the event of a notice of appeal of an order revoking or rescinding a project permit or approval, the order shall be stayed during the pendency of any administrative appeal.

#### **20.30.1240 Expedited informal review.**

A. Purpose. Expedited informal review is an informal process that is intended to provide an opportunity for the person to whom the stop-work or stop-use order is issued to seek immediate review to address any claimed errors in the determination by the Control Authority to issue such an order.

B. Who May Seek Review. The person to whom the stop-work or stop-use order is directed, or an authorized representative of that person, may seek expedited informal review of the order by a public official vested with authority to review and uphold or terminate the stop-work or stop-use order.

C. Request For Review. The person seeking expedited informal review may request review within ten days of service of the order by contacting, during normal City business hours, the person identified in the order as the person authorized to initiate the review, requesting initiation of expedited informal review and providing a phone number at which the requesting person can be reached during business hours.

D. Review. The public official of the Control Authority designated to conduct the review, or designee, shall provide a reasonable opportunity for the person requesting review to submit in writing or orally, or both, a statement describing the error(s) of law and error(s) of fact, and any

other supporting records or documents or information in any form, establishing why the stop-work or stop-use order was issued in error. The public official may consult with any person(s) who the public official determines may have relevant information, and take into consideration any relevant records or documents or information in any form.

E. Decision. The public official shall, within three business days following the date of the request for review, notify the person requesting review of the public official's decision to either terminate or uphold the issuance of the order; provided that, the public official may extend this time period for good cause.

F. Decision Not Subject to Administrative Appeal. The decision of the public official shall not be subject to appeal to the Hearing Examiner.

G. Effect of Filing an Appeal. Submitting a request for expedited informal review will not impair the right to appeal the stop-work or stop-use order pursuant to this chapter, and will not operate to toll the time period for filing such an appeal. A person appealing a stop-work or stop-use order is not required to request expedited informal review as a condition of filing an appeal. The filing of an appeal shall not operate to deprive the public official of jurisdiction to conduct an expedited informal review that has been timely requested.

#### **20.30.1250 Liability for supplemental fees.**

A. Persons, whether inside or outside the City, that discharge substances in violation of this chapter to the municipal wastewater system including, but not limited to, persons that cause pass through or interference, shall be liable to pay any supplemental fees the City or Control Authority incurs to respond to such violation. Liability for supplemental fees under this section shall also apply to any person responsible for discharging a substance in violation of this chapter to the municipal wastewater system, regardless whether they own the property from which the prohibited discharge originates. Assessment of supplemental fees shall be in addition to:

1. Any enforcement action authorized by this chapter;
2. Any cost recovery remedy available to the control authority under state and federal environmental laws and regulations; and
3. Any other remedy available at law or in equity to address a violation of this chapter.

B. Any supplemental fees assessed shall become due and payable to the City, or the Control Authority, within 30 days of receipt of such assessment. If supplemental fees are appealed and affirmed in whole or in part, such fees shall become due and payable within 30 calendar days of receipt of a final decision by the Hearing Examiner or a court. The City or Control Authority may pursue collection of non-payment of supplemental fees by any lawful means authorized, including referral to a collection agency.

#### **20.30.1260 Corporate and personal liability.**

A. As used in this section:

“Agent” means any director, officer, or employee of a corporation, or any other person who is authorized to act on behalf of the corporation.



“High managerial agent” means an officer or director of a corporation or any other agent in a position of comparable authority with respect to the formulation of corporate policy or the supervision in a managerial capacity of subordinate employees.

B. A corporation is strictly liable for the acts or omissions of its agents that constitute a civil violation.

C. A corporation is guilty of a criminal offense when:

1. The act or omission constituting the offense consists of an omission to discharge a specific duty of performance imposed on corporations by law; or
2. The act or omission constituting the offense is engaged in, authorized, solicited, requested, commanded, or tolerated by the board of directors or by a high managerial agent acting within the scope of the agent’s employment and on behalf of the corporation; or
3. The act or omission constituting the offense is engaged in by an agent of the corporation, other than a high managerial agent, while acting within the scope of the agent’s employment and in behalf of the corporation and (i) the offense is a gross misdemeanor or misdemeanor, or (ii) the offense is one defined by the this chapter which clearly indicates an intent to impose such criminal liability on a corporation.

D. A person is civilly liable for an act or omission constituting a violation which the person performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in the person’s own name or behalf.

E. A person is criminally liable for an act or omission constituting a criminal offense which the person performs or causes to be performed in the name of or on behalf of a corporation to the same extent as if such conduct were performed in the person’s own name or behalf.

F. Whenever a duty to act is imposed by law upon a corporation, any agent of the corporation who knows the agent has or shares primary responsibility for the discharge of the duty is criminally liable for a reckless or, if a high managerial agent, criminally negligent omission to perform the required act to the same extent as if the duty were by law imposed directly upon such agent.

### **20.30.1270 Suspension of service.**

A. Suspension of Service - Emergency. In addition to any other authority set forth in this chapter, the Control Authority may, pursuant to a stop-use order, immediately suspend an industrial user’s actual or threatened discharge to the municipal wastewater system whenever the Control Authority has reasonable cause to believe that, an actual or threatened discharge, or other violation of this chapter, either:

1. Presents an imminent threat or substantial danger to the health and welfare of persons or the environment, or
2. Presents an imminent threat to, or does cause, pass through or interference.

Depending on the emergent circumstances, the Control Authority may provide either verbal or written notice to suspend an industrial user’s actual or threatened discharge.

B. Suspension of Service – Other Violations. The Control Authority may, pursuant to a stop-use order, suspend wastewater services at a premises where a connection to the municipal wastewater system has been made in violation of this chapter, the Control Authority’s NPDES permit, or any authorization, control mechanism, directive or compliance order issued under authority of this chapter.

C. Suspension of Service – Access. Unreasonable refusal to allow Control Authority representatives to access a premises pursuant to FMC 20.30.900 (Right of Entry) to determine compliance with this Chapter may, pursuant to a stop-use order, result in the suspension of discharges to the municipal wastewater system.

D. Any industrial user receiving a notice to suspend its discharge shall suspend discharging to the municipal wastewater system in accordance with the requirements contained in the notice. If an industrial user fails to immediately comply with the terms of a notice to suspend an actual or threatened discharge, the Control Authority may take steps it deems reasonably necessary to protect the health and welfare of persons, the environment or the POTW, which may include, but is not limited to, severing the industrial user’s sanitary sewer connection at any accessible location. As a condition of allowing the industrial user to recommence its discharge, the Control Authority may require the industrial user to submit a written statement describing the corrective action it has implemented to prevent discharges that presented an imminent danger or threat to the health and welfare of persons, the environment, or threatened to interfere with the operation of the POTW.

E. Nothing in this section prevents the Control Authority from taking any other enforcement action authorized by this chapter or otherwise available at law.

**FMC 20.30.1280 Appeal – Request for hearing.**

A. Appeal – Request for Hearing.

1. Review of Civil Violation. A person to whom a notice of civil violation is issued pursuant to this chapter (“appellant”) may appeal such notice to the Hearing Examiner within ten calendar days after the date the notice of civil violation is served as determined in accordance with this chapter.

2. Review of Compliance Order. A person to whom a compliance order is issued pursuant to this chapter (“appellant”) may appeal such order to the Hearing Examiner within ten calendar days after the date the notice of compliance order is served as determined in accordance with this chapter. A request for expedited informal review shall not operate to toll the time period for filing an appeal of a stop-work or stop-use order.

B. Appeal – Filing.

1. Filing; Where. A notice of appeal shall be filed in writing with the Hearing Examiner during regular business hours by the appellant, or, in the case of a corporation, a duly authorized agent of the appellant. The Hearing Examiner may adopt rules consistent with this chapter allowing electronic filing of a notice of appeal.

2. Weekends; Holidays. If the final day to file a notice of appeal is on a weekend or holiday, the appeal will be timely if filed before the close of business on the

next business day following the holiday or weekend. For purposes of this section, holiday shall mean those weekdays during which the City offices are closed for established holidays.

3. Jurisdiction of Hearing Examiner. The Hearing Examiner shall not have jurisdiction to hear an appeal for which the notice of appeal is not filed within the time periods set forth in this chapter.

4. Remission; Mitigation. A person to whom a notice of civil violation or compliance order has been issued, which civil violation or compliance order is subject to an application for mitigation or remission which application has been timely filed under the applicable provisions of the FMC, may appeal the underlying notice of violation and/or compliance order, and the decision on the application for mitigation or remission, by filing an appeal within ten calendar days after the date of service of the decision on the application for mitigation or remission.

#### C. Content of Notice – Filing.

1. Notice of Appeal of Civil Violation. The written notice of appeal of a civil violation and request for hearing shall identify with specificity, (a) the name of the appellant, (b) the mailing address at which the appellant may receive notices related to the hearing, (c) the notice of civil violation sought to be appealed, (d) the violation or violations being appealed, and (e) a statement identifying the relief the appellant is seeking from the Hearing Examiner. If the notice of civil violation is issued in conjunction with a compliance order and the appellant intends to appeal the compliance order, the notice of appeal and request for hearing must also comply with FMC 20.30.1280.C.2 below. The notice of appeal shall be signed by the appellant or a duly authorized representative of the appellant, and in the case of a corporation, a duly authorized agent of the appellant.

2. Compliance Order. The written notice of appeal of a compliance order and request for hearing shall identify with specificity, (a) the name of the appellant, (b) the mailing address at which the appellant may receive notices related to the hearing, (c) the compliance order sought to be appealed, (d) the parts of the order that the appellant alleges are in error, (e) a concise statement of each alleged error(s) of law and/or error(s) of fact that form the basis for the appeal, (f) a concise statement of facts upon which the appellant relies to sustain the statement of error, and (g) a statement identifying the relief the appellant is seeking from the Hearing Examiner. If the compliance order is issued in conjunction with a notice of civil violation and the appellant intends to appeal the notice of violation, the notice of appeal and request for hearing must also comply with FMC 20.30.1280.C.1 above. The notice of appeal shall be signed by the appellant, or a duly authorized representative of the appellant, and in the case of a corporation, a duly authorized agent of the appellant. The filing of such an appeal shall not alter the time for compliance with the compliance order unless modified by the Hearing Examiner following a hearing.

D. Hearing To Be Scheduled. The Office of the Hearing Examiner will determine and schedule the time and date for a hearing before the Hearing Examiner. Extensions may be granted by the Hearing Examiner for good cause shown or when there is mutual agreement of the parties or to accommodate the schedule of the Hearing Examiner.

E. Hearing – Procedure. The Hearing Examiner shall conduct an adjudicative hearing on the appeal pursuant to the rules of procedure of the Hearing Examiner. The City and the appellant shall be the parties in the hearing and each party may call witnesses and may be represented by legal counsel, may present testimony, confront and cross-examine adverse witnesses, and submit evidence and information in accordance with procedures prescribed by the Hearing Examiner. The Hearing Examiner shall give substantial weight to any discretionary decision, or any construction of the FMC or related regulation, rendered by the compliance officer or responsible public official. The written administrative record underlying the contested action or determination may be submitted to the Hearing Examiner and made a part of the record on appeal.

F. Burden of Proof. The City shall have the burden of proof to demonstrate by a preponderance of the evidence that the violation or violations that are the subject of the appeal was or were committed and that the appellant is the responsible person. In the case of an appeal of a compliance order, the appellant shall have the burden of proof to demonstrate by a preponderance of the evidence that the compliance order was imposed, issued, or determined in error.

#### G. Proceedings.

1. Prehearing Conference. A prehearing conference may be required by the Hearing Examiner.

2. Conduct of proceedings. All hearings shall be conducted in accordance with rules promulgated by the Hearing Examiner. The Hearing Examiner shall have the authority to issue subpoenas compelling the appearance of witnesses and the production of documents and shall, further, have full authority to rule on all procedural matters, objections, and motions.

H. Stay of Action Pending Appeal. An appellant may request the Hearing Examiner to stay or suspend an action by the City to implement the decision under review pending the outcome of the administrative appeal. The request must set forth a statement of grounds for the stay and the factual basis for the request. The Hearing Examiner may grant a stay only if the Hearing Examiner finds that:

1. The party requesting the stay is likely to prevail on the merits;
2. Without the stay, the party requesting it will suffer irreparable harm;
3. The grant of a stay will not substantially harm other parties to the proceedings;
4. The grant of a stay will not cause or contribute to an imminent threat of harm to persons or property; and
5. The request for the stay is timely in light of the circumstances of the case.

The Hearing Examiner may grant the request for a stay upon such terms and conditions, including the filing of security, as are necessary to prevent harm to other parties by the stay.

I. Determination. The Hearing Examiner shall, as to each violation subject to appeal, determine whether the City has established by a preponderance of the evidence that the violation was committed and that the appellant is the responsible person, and shall affirm or vacate the City's decision regarding such violation or violations.

The Hearing Examiner shall, as to each compliance order subject to appeal, determine whether the appellant has established by a preponderance of the evidence that the order was imposed, issued, or determined in error based upon one or more of the following:

1. The order was imposed, issued, or determined in excess of the authority or jurisdiction of the City or Control Authority; or
2. The order was imposed, issued, or determined upon unlawful procedure; or
3. The order was affected by material error of law or fact; or
4. The order was clearly erroneous in view of the entire record as submitted; or
5. The order was arbitrary or capricious.

The Hearing Examiner may, as to each compliance order subject to appeal, (a) affirm the decision of the City, (b) remand the matter back to the City for further action consistent with the decision of the Hearing Examiner, (c) reverse the order or determination if the substantial rights of the appellant may have been prejudiced because the order or determination was in violation of one or more factors set forth above, or (d) modify the order or decision to the extent necessary to correct the error.

J. Issue Order. The Hearing Examiner shall issue an order to the parties, which order shall contain the following information:

1. The decision regarding the matter being appealed, including findings of fact and conclusions based thereon in support of the decision; and/or
2. The required corrective action; and/or
3. The date and time by which the correction must be completed; and/or
4. The monetary penalties assessed; and/or
5. A remand and order for further action.

K. Notice of Decision. The Hearing Examiner shall give notice of the decision to the appellant and the City within a reasonable period of time following the hearing. This decision shall be considered the final decision in the absence of a motion for reconsideration.

L. Failure to Appear. If the appellant fails to appear at the scheduled hearing, the Hearing Examiner shall enter an order of dismissal of the appeal, unless good cause is found to extend the hearing date or the City agrees to extend the hearing date, or the Hearing Examiner finds that notice of the hearing was not provided to the appellant.

M. Failure to Comply. It shall be unlawful to fail to comply with a final non-appealable decision of the Hearing Examiner. For purposes of this section, non-appealable means that all administrative and judicial appeals have been exhausted. Violations of a final non-appealable decision of the Hearing Examiner are subject to enforcement pursuant to this chapter. Willful noncompliance with a final non-appealable decision of the Hearing Examiner shall constitute a misdemeanor and shall be punished by a fine of up to \$1,000 or 90 days in jail, or by both such fine and imprisonment. Each day that a violation continues shall constitute a separate and continuing offense.

N. Reconsideration. An appellant may seek reconsideration of the decision of the Hearing Examiner by filing a motion with the office of the Hearing Examiner requesting reconsideration of a decision entered by the Examiner. A motion for reconsideration must be in writing and must set forth the alleged errors of procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14 calendar days of the issuance of the Examiner's decision/recommendation, not counting the day of issuance of the decision/recommendation. If the last day for filing the motion for reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next working day. The requirements set forth herein regarding the time limits for filing of motions for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole discretion of the Examiner to determine whether an opportunity shall be given to other parties for response to a motion for reconsideration. The Examiner, after a review of the matter, shall take such further action as the Hearing Examiner deems appropriate, which may include the issuance of a revised decision/recommendation. If a timely motion is filed meeting the jurisdictional requirements for reconsideration of the decision of the Hearing Examiner, the decision of the Hearing Examiner shall not be final until the decision of the Hearing Examiner upon the motion for reconsideration is served personally or by mailing.

O. Final Decision. A party aggrieved by a final decision of the Hearing Examiner may appeal or seek review of the decision in accordance with applicable law. Unless another period of time applies under applicable law or court rule, any appeal of the decision of the Hearing Examiner must be filed within 21 calendar days from the date the Hearing Examiner's final decision was served, personally or by mailing.

P. Subsequent Repeat Violation – Failure to Abate – Misdemeanor. The commission of a subsequent violation or the failure or refusal to take corrective action pursuant to a decision of the Hearing Examiner after receipt of written notice of such decision shall constitute a misdemeanor. The City Attorney, or designee, shall have discretionary authority to file a subsequent violation as either a civil violation pursuant to this chapter, or a civil infraction, or a misdemeanor.

### **20.30.1290 Remedies non-exclusive.**

The enforcement provisions in this chapter are not exclusive remedies. The City may take any, all, or any combination of the enforcement actions described in this chapter against an industrial user in violation of this chapter. Furthermore, the City may pursue any other available remedies that exist in law or equity, including but not limited to, injunctive relief against an industrial user

in violation of this chapter. Enforcement of violations will generally be in accordance with Chapter 20.30 of the Fircrest Municipal Code and the Enforcement Response Plan.



## MISCELLANEOUS PROVISIONS

### **20.30.1300 Severability.**

If any portion of this chapter, as now or hereafter amended, or its application to any person or circumstances, is held invalid, unenforceable, or unconstitutional, such adjudication shall not affect the validity of this chapter, as now or hereafter amended, or any section, provision or part hereof or thereof not adjudicated to be invalid, unenforceable, or unconstitutional, and its application to other persons or circumstances shall not be affected.